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# TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.state.tx.us/>

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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

## Request for Opinion

### RQ-0828-GA

#### Requestor:

The Honorable Isidro R. Alaniz

49th Judicial District Attorney

Post Office Box 1343

Laredo, Texas 78042

Re: Whether a city manager of a general law municipality may simultaneously serve as a member of the board of trustees of an independent school district whose boundaries contain the municipality (RQ-0828-GA)

#### Briefs requested by November 13, 2009

For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.

TRD-200904624

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: October 14, 2009

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## Opinions

### Opinion No. GA-0740

The Honorable Anna Laura Cavazos Ramirez

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Authority to limit the frequency of property appraisals by an appraisal district to once every three years (RQ-0792-GA)

## SUMMARY

An appraisal district and its participating taxing units are not authorized to submit an issue to the voters for an election to require a particular appraisal schedule, whether initiated by petition or otherwise. Sections 23.01, 23.23, and 25.18 of the Tax Code do not prohibit conducting appraisals every third year rather than annually.

### Opinion No. GA-0741

The Honorable John Whitmire

Chair, Committee on Criminal Justice

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether the section 143.105, Local Government Code, prohibition against certifying a person 45 years or older for a beginning position in a police department applies to the reappointment of a police officer under section 143.1251, Local Government Code (RQ-0797-GA)

## SUMMARY

We find no case law or statutory provision that says that a police officer who voluntarily resigns from a police department and is subsequently reappointed to the department pursuant to Local Government Code section 143.1251 is subject to the section 143.105 prohibition against certifying a person forty-five years or older for a beginning position in the police department.

For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.

TRD-200904619

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: October 13, 2009

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 79. BUSINESS ENTITY FILINGS

The Office of the Secretary of State proposes amendments to §§79.2 - 79.4, 79.9, 79.10, 79.12, 79.21 - 79.24, 79.26 - 79.28, 79.30, 79.31, 79.36, 79.42, 79.46 - 79.48, 79.71 - 79.73, and 79.82; new §79.34 and §79.81; and the repeal of §§79.8, 79.11, 79.25, 79.34, 79.51, 79.52, and 79.81, concerning business entity filings with the Corporations Section. The rule changes are proposed in anticipation of the January 1, 2010 mandatory effective date of the Texas Business Organizations Code. In anticipation of the mandatory effective date, references to outdated statutes are deleted and references to the Texas Business Organizations Code are inserted. The amendments also clarify the language of the rules and provide an internet site address for access to secretary of state forms for business entity filings.

Section 79.2 generally requires that business with the Corporations Section be transacted in writing. The proposed amendment clarifies this requirement by using the mandatory "shall."

Section 79.3 addresses the receipt of letters and documents in the Corporations Section. The second sentence of subsection (a), relating to receipt of documents by the Corporations Section outside of normal business hours, is deleted because it is inconsistent with Corporations Section practice. Subsection (b) is amended to include the rule currently encompassed in §79.8 that dates generated on letters, documents, or envelopes by persons other than secretary of state employees cannot be considered as the date of receipt. Other amendments to subsections (a) and (b) clarify the language. Subsection (c) was amended and text was deleted to express the rule regarding date of receipt for faxed documents, rather than referring to Chapter 71.

Section 79.4 requires documents to be clear and legible. The proposed amendment updates the rule to require clarity for purposes of electronic imaging, rather than microfilm copies.

Section 79.8, regarding date of receipt, is repealed. The section is redundant of proposed §79.3.

Section 79.9 addresses date of filing. Subsection (a) is amended to reflect the practice of file stamping by the Corporations Section. The amendment also incorporates the rules from current §79.11 regarding delayed effective dates and time of transmission. Subsection (b) contains the text of current §79.9 and amends the text to refer to the exception contained in §79.10.

Section 79.10, regarding requested date of filing, is amended to reflect the Corporations Section practice of honoring date of filing requests on or within three days after receipt of the document

by the Corporations Section. Further amendments clarify the language of the rule.

Section 79.11, regarding hour of filing, is repealed. The section is redundant of proposed §79.9.

Section 79.12, regarding forms provided, is amended to provide the internet addresses of the secretary of state business filings forms.

Section 79.21 addresses administrative review of documents submitted for filing. The proposed amendments update the rule to refer to and use the language of the Texas Business Organizations Code.

Section 79.22, regarding prioritization of processing, is amended to use language and capitalization consistent with the rest of Chapter 79.

Section 79.23 addresses fraudulent filings. Outdated statutory references are deleted and the amendments refer to the Texas Business Organizations Code.

Section 79.24 addresses correction of filed documents. Outdated terminology is deleted and the amendments use the language of the Texas Business Organizations Code.

Section 79.25, regarding identification of applicant for name reservations and name registrations for purposes of fee calculations, is repealed. The rule is not necessary or accurate under the Texas Business Organizations Code, which provides in §4.151(2) that all such fees are \$40.

Section 79.26 addresses the designation of a contact address upon filing a certificate of withdrawal. The current rule expressly refers to only corporations and limited liability companies, and the proposed rule is amended to expressly refer to all foreign filing entities and foreign limited liability partnerships and therefore accurately reflect the provisions of the Texas Business Organizations Code. Outdated statutory references are deleted and the amendments refer to the Texas Business Organizations Code. The permissive option of subsequently changing the address provided is deleted because §9.011 of the Texas Business Organizations Code requires amendment to the certificate of withdrawal if the address provided changes.

Section 79.27 addresses nonprofit corporation periodic reports. Amendments update the rule to use the terminology found in the Texas Business Organizations Code. The amendments also replace outdated statutory references with corresponding Texas Business Organizations Code references. The provision in subsection (c) prohibiting a nonprofit corporation in forfeited rights status from amending its formation or registration documents is deleted because the provision is neither consistent with the Texas Business Organizations Code nor secretary of state practice.

Section 79.28, relating to registered office addresses, is amended to expressly state the longstanding rule in Texas that an entity may not serve as its own registered agent. Specific references to corporations and limited liability companies are deleted because the rule applies to other entities as well.

Section 79.30, relating to applicability of secretary of state entity name availability rules, is amended to replace outdated statutory references and terminology with corresponding Texas Business Organizations Code references and terminology. The statement that the entity name availability rules apply to determinations for corporations, limited partnerships, and limited liability companies is deleted as not necessary under the Texas Business Organizations Code.

Section 79.31 identifies characters of print acceptable in entity names. The amendments and deletions update the rule to reflect the expanded capabilities of the Corporations Section database and clarify the language.

Section 79.34, regarding words of incorporation or organization, is repealed and replaced by proposed §79.34, regarding words of organization, and using the terminology of the Texas Business Organizations Code. Rather than setting forth acceptable words of organization, as in current subsection (a), proposed subsection (a) refers to the acceptable words of organization provided by the Texas Business Organizations Code. Proposed subsection (b) identifies words that do not satisfy the statutory requirements, rather than scattering such words throughout the rule, as in current §79.34. Proposed subsection (c) replaces current subsection (e), providing that words of organization are insufficient to distinguish deceptively similar or same names.

Section 79.36 defines entity names that are the same or identical. The amendment clarifies that "same," as used in the rules, and "identical," as used in §5.053 of the Texas Business Organizations Code, are interchangeable terms for purposes of entity name availability.

Section 79.42, regarding form of consent, deletes the statement that consent by telegraph cannot be accepted. The deletion reflects that an electronic transmission is a writing under the Texas Business Organizations Code.

Section 79.46 provides exceptions to entity name availability rules for churches and ministries. The amendment clarifies the rule by including a reference to ministries in the text of the rule as well as the title.

Section 79.47 addresses the use of foreign words in entity names. The amendment clarifies the language of the title.

Section 79.48 identifies matters not considered in entity name availability determinations. The amendment replaces outdated terminology and inserts terminology consistent with the Texas Business Organizations Code.

Section 79.51, regarding name availability determinations for limited partnerships, is repealed. The section is redundant of §79.30.

Section 79.52, regarding name availability determinations for limited liability companies, is repealed. The section is redundant of §79.30.

Section 79.71 addresses the calculation of the 90th day after filing for purposes of documents filed with delayed effective dates. The amendments replace outdated statutory references with corresponding Texas Business Organizations Code ref-

erences and correct an incorrect citation to Chapter 71 of the Texas Administrative Code.

Section 79.72 addresses the statement required for filing a document upon the occurrence of a delayed effective condition. The amendments replace outdated statutory references with corresponding Texas Business Organizations Code references.

Section 79.73 contains rules regarding action taken by the Corporations Section for documents with delayed effective dates. The amendment replaces outdated terminology and inserts terminology consistent with the Texas Business Organizations Code.

Section 79.81, regarding conversion filings, is repealed and replaced by proposed §79.81, regarding conversion filings. Proposed §79.81 follows the Texas Business Organizations Code and organizes the information presented into two topical subsections, rather than four. The proposed rule deletes the statement in current subsection (b) that the filing of a conversion document does not terminate the certificate of authority (now referred to as the registration) of a foreign entity. This deletion is consistent with the Texas Business Organizations Code §9.012, which provides for automatic termination of registration.

Section 79.82 addresses abandoned documents. The amendments replace outdated terminology and insert terminology consistent with the Texas Business Organizations Code.

#### FISCAL NOTE

Leigh A. Joseph, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the sections are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

#### PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Joseph has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to view the rules as corrected. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

#### COMMENTS

Comments on the proposed amendments, repeals and new rules may be submitted in writing to: Leigh A. Joseph, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, November 23, 2009.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 1 TAC §§79.2 - 79.4, 79.9, 79.10, 79.12

#### STATUTORY AUTHORITY

Amendments to §§79.2 - 79.4, 79.9, 79.10, and 79.12 are proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 4 of the Code is affected by the amendments.

*§79.2. Business To Be Transacted in Writing.*

Except as otherwise provided by these rules, all business with the Corporations Section shall ~~[should]~~ be transacted in writing. The action of the Corporations Section will be based exclusively on the written record in the section.

*§79.3. Receipt of Letters and Documents.*

(a) An employee of the secretary of state will stamp all letters or documents received in the Corporations Section with the its ~~[its]~~ date of receipt. The hour of receipt is not noted. ~~[Documents are not received in the Corporations Section on Saturdays, Sundays, or state holidays. Documents may be delivered by hand during office hours; office hours are 8 a.m. to 5 p.m.]~~

(b) Mail is not ~~[considered as]~~ received in the Corporations Section until it has been brought from the post office or otherwise hand-delivered to the Office of the Secretary of State. A postmark, a date generated on a letter or document solely as a result of its electronic transmission, or a date placed on a letter, document, or envelope by some person other than an employee of the secretary of state cannot be considered as the date of receipt. ~~[For rules concerning date of receipt of documents filed electronically using a facsimile or FAX machine, see §71.4 of this title (relating to Receipt of Letters and Papers by FAX and Otherwise).]~~

(c) Documents transmitted by fax after office hours are received the next business day or when actually received by an employee of the secretary of state.

*§79.4. Documents To Be Clear and Legible.*

All documents must be clear and legible, written with black ink on white paper, so that a clear electronic image ~~[microfilm copies]~~ may be made.

*§79.9. Date of Filing.*

(a) An employee of the secretary of state will stamp all documents filed in the Corporations Section with the date of filing. The hour of filing is not noted. However, documents permitted by law to contain delayed effective dates and times may designate a time of effectiveness within the contents of the document. The time of transmission generated on or appearing on a letter or document will not be regarded by the Office of the Secretary of State as its hour of filing.

(b) Except as provided in §79.10 of this title (relating to Requested Date of Filing), the ~~[The]~~ date of filing of documents which conform to law and for which the filing fee has been paid will be the same date as the date of receipt. If a document does not conform to law, it will be returned to the sender. When the document is corrected and resubmitted, the date of filing of the document will be the same date as the date of the last receipt. The date of filing may not be a date prior to the date on which the document is found to conform to law.

*§79.10. Requested Date of Filing.*

At the request of the sender, a document may be filed on a [any] ~~[any]~~ date which is on or within three days after the date the document is received by the Corporations Section and found to conform to law, even if the requested date falls on a Saturday, Sunday, or holiday. A certificate of filing will not be issued before ~~[prior to the date stamped on the document as]~~ the date of filing.

*§79.12. Forms Provided.*

The secretary of state will provide forms for use in filings when required by law, or when convenient for the Office of the Secretary of State. Forms are available on the secretary of state

web site at: [http://www.sos.state.tx.us/corp/forms\\_boc.shtml](http://www.sos.state.tx.us/corp/forms_boc.shtml) and [http://www.sos.state.tx.us/corp/forms\\_reports.shtml](http://www.sos.state.tx.us/corp/forms_reports.shtml).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**1 TAC §79.8, §79.11**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

**STATUTORY AUTHORITY**

The repeal of §79.8 and §79.11 is proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 4 of the Code is affected by the repeal.

*§79.8. Date of Receipt.*

*§79.11. Hour of Filing.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**SUBCHAPTER B. DOCUMENT REVIEW**

**1 TAC §§79.21 - 79.24, 79.26 - 79.28**

**STATUTORY AUTHORITY**

Amendments to §§79.21 - 79.24 and §§79.26 - 79.28 are proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized

to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 3, 4, 9, and 22 of the Code are affected by the amendments.

*§79.21. Administrative Review.*

The secretary of state will determine whether a document authorized to be filed with the secretary of state meets the minimum statutory requirements for filing ~~[under the governing statutory provisions]~~. The secretary of state will not determine substantial compliance with the Texas Business Organizations Code or verify whether the entity has complied with its governing documents ~~[bylaws, regulations, or agreement in obtaining the necessary approval for the transaction]~~; whether a material misrepresentation has been made in any document submitted on behalf of an entity; or whether the person or persons signing the document on behalf of the entity were in fact authorized to do so.

*§79.22. Prioritization of Processing.*

The order of review, processing and filing of documents, other than trademark documents, is based on the manner of delivery of the document, whether expeditious review of the document was requested pursuant to §71.10 of this title (relating to Corporations Section Special Services); and its date of receipt in the Corporations Section ~~[section of the secretary of state]~~. Consequently, a document may be rejected on the basis of the filing of a document with a later date of receipt when the subsequently received document was reviewed, processed and filed prior to the previously received document.

*§79.23. Fraudulent Filings.*

The secretary of state cannot revoke the filing of a document upon receipt of evidence that the document was fraudulently filed. A criminal proceeding may be brought for a violation of the provisions of §4.008 of the Texas Business Organizations Code ~~[Texas Business Corporation Act, Article 10.02; Texas Non-Profit Corporation Act, Article 1396-9.03a; Texas Limited Liability Company Act, Article 9.02; and Texas Revised Partnership Act, §13.08(b)(13);]~~ by the appropriate prosecuting authority. Criminal proceedings pursuant to §4.008 are not initiated by the secretary of state ~~[under these cited provisions]~~.

*§79.24. Correction of Filed Documents.*

(a) Documents may be corrected to contain only those statements which lawfully could have been included in the original document. A ~~[Articles of correction or a]~~ certificate of correction may not be used to revoke a previously filed document or to alter, include or delete a statement, which by its alteration, inclusion or deletion, would have caused the secretary of state to determine that the document did not conform to law at the time of the original filing.

(b) The secretary of state will not refund any portion of a fee calculated on the basis of information required to be set forth in a document by statute upon the subsequent submission and filing of a certificate ~~[articles]~~ of correction correcting the information upon which the fee was based.

*§79.26. Address on Certificate of Withdrawal.*

Section 9.011 of the Texas Business Organizations Code requires ~~[The Texas Business Corporation Act, Article 8.14; the Texas Non-Profit Corporation Act, Article 1396-8.13; and the Texas Limited Liability Company Act, Article 7.09; require]~~ a foreign filing entity or foreign limited liability partnership ~~[corporation or limited liability company]~~ to designate a post office address on a certificate of withdrawal to which the secretary of state may mail a copy of any process against the entity

~~[corporation]~~ that may be served on the secretary of state. ~~[After the filing of the certificate of withdrawal, a corporation or limited liability company may change this address by notifying the secretary of state of such change in writing.]~~

*§79.27. Nonprofit [Non-Profit] Corporation Periodic Reports.*

(a) Notice. Notices relating to the filing of a periodic report of a nonprofit ~~[non-profit]~~ corporation under §22.358 of the Texas Business Organizations Code ~~[Article 1396-9.01 of the Texas Non-Profit Corporation Act]~~ shall be sent to the registered office address of record with the secretary of state. Notices relating to the forfeiture of corporation's right to conduct its affairs shall be sent to the same address specified for the original report, notwithstanding receipt of evidence by the secretary of state that the address specified was an insufficient address or that the mailing of the notice was undeliverable. The failure of the corporation to receive these notices does not relieve the corporation of the requirement to file the periodic report or extend the time within which the required report must be filed.

(b) Changes to Report Information. Changes to the name of the registered agent and to the registered office address may be made by making changes to the information contained in the periodic report. A change to the name of the corporation cannot be effected through the filing of the periodic report. In order to change the name of the corporation, the corporation must file a certificate of amendment or other document amending the certificate of formation ~~[articles of amendment to the articles of incorporation]~~.

(c) Failure to Comply. A nonprofit ~~[non-profit]~~ corporation that fails to file the periodic report required within 30 days from the date that the report is sent by the secretary of state will forfeit its right to conduct its affairs in Texas. ~~[While forfeited, the non-profit corporation may not amend its articles of incorporation or certificate of authority until it has been relieved of its forfeiture by filing the report. However, the forfeiture of the corporation's right to conduct its affairs does not prevent the corporation from filing articles of dissolution, withdrawal or termination.]~~ The failure of a nonprofit ~~[non-profit]~~ corporation to relieve itself of the forfeiture by filing the required report within 120 days of the mailing of the notice of the forfeiture by the secretary of state will result in the involuntary termination ~~[dissolution]~~ of the corporation or revocation of its registration ~~[certificate of authority]~~.

(d) Voluntary Submission of a Periodic Report. A nonprofit ~~[non-profit]~~ corporation may submit for filing by the secretary of state a report under the provisions of §22.357 of the Texas Business Organizations Code ~~[Article 1396-9.01 of the Texas Non-Profit Corporation Act]~~ when not required to do so by the secretary of state. The voluntary submission of a report under this subsection does not relieve the corporation of the requirement to file the periodic report or extend the time within which the report must be filed when the report is specifically required from the corporation by the secretary of state.

*§79.28. Registered Agent and Office [Address].*

(a) An entity may not serve as its own registered agent.

(b) Except as provided below, a ~~[The]~~ registered office address ~~[of a corporation or limited liability company]~~ must include a street or building address for purposes of providing the public with notice of the physical street location at which process may be served on the registered agent; a post office box alone is not a sufficient address for the registered office. The address of a commercial business which provides "private mail box" services is not sufficient as a registered office address, unless the commercial enterprise is the business of the designated registered agent. If the registered office address is in a city with a population of less than 5,000, the secretary of state will accept an address other than a street address for the registered office.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## 1 TAC §79.25

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

### STATUTORY AUTHORITY

The repeal of §79.25 is proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 5 of the Code are affected by the repeal.

§79.25. *Identification of Applicant for Name Reservations and Name Registrations.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER C. ENTITY NAMES

### 1 TAC §§79.30, 79.31, 79.34, 79.36, 79.42, 79.46 - 79.48

#### STATUTORY AUTHORITY

Amendments to §§79.30, 79.31, 79.36, 79.42, and 79.46 - 79.48 and new §79.34 are proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of

state to perform the duties therein imposed upon the secretary of state.

Chapter 5 of the Code is affected by the amendments and new section.

#### §79.30. *Applicability.*

Pursuant to §5.053 of the Texas Business Organizations Code [~~the Texas Business Corporation Act, Article 2.05; the Texas Revised Limited Partnership Act, §1.03; and the Texas Limited Liability Company Act, Article 2.03~~], a proposed entity name may not be the same as, or deceptively similar to, the name of a Texas or registered [qualified] foreign corporation, limited partnership, or limited liability company. [~~In accordance therewith, these sections shall apply to all name availability determinations made for either a corporation, limited partnership, or limited liability company name.~~] Such names may be set forth in an entity's organizational document, reserved or registered name, or application for a foreign entity to transact business in Texas. Wherever the terms "entity" or "entities" appear in this entity name availability section, they may be replaced with the following terms: "domestic or foreign corporation"; "domestic or foreign limited partnership"; or "domestic or foreign limited liability company" or the plural of such terms.

#### §79.31. *Characters of Print Acceptable in Names.*

(a) Entity names may consist of letters of the Roman alphabet, Arabic numerals, [~~and certain~~] symbols capable of being reproduced on a standard English language keyboard [typewriter], and such other symbols as permitted by the secretary of state's database and as posted on the secretary of state's website, or a combination thereof.

(b) No distinction as to type face or font in the presentation of an entity name will be recognized. Subscript or superscript characters cannot be entered into the computer records of the secretary of state; consequently, such characters will not appear above or below the other characters in the entity name. Example: H<sub>2</sub>O will appear as H2O. The secretary of state, however, will recognize the use of either upper or lower case letters in the presentation of the entity name.

(c) Arabic numerals include 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(d) The symbols recognized as part of a name may include ! " \$ % ' ( ) \* ? # = @ [ \ ] ^ \_ + & and -.

#### §79.34. *Words of Organization.*

(a) Acceptable words of organization, or abbreviations thereof are set forth in §§5.054 - 5.059 of the Texas Business Organizations Code.

(b) The following words, when used alone, do not satisfy the statutory requirements for words of organization:

(1) "companies," "corporations," "incorporation," and "unlimited,"

(2) "limited partnerships;" and

(3) "limited" or "company," to identify a limited liability company.

(c) Neither the words nor the abbreviations of the words of organization listed in §§5.054 - 5.059 of the Texas Business Organizations Code are a sufficient basis to distinguish among otherwise deceptively similar or same names.

#### §79.36. *Same or Identical Defined.*

Entity names are the same or identical if a comparison of the names reveals no difference.

#### §79.42. *Form of Consent.*



No particular form of consent is required. The consent must be in writing and signed by an officer or authorized agent of the consenting entity. Consent given orally [or by telegraph] cannot be accepted. Consent from more than one entity may be required in some instances. The letter of consent must not state conditions; it must give unequivocal consent.

**§79.46. Exception for Churches and Ministries.**

Entity names of churches and ministries will not be considered similar if there is some sufficient basis for distinguishing the name from an existing entity name.

(1) Example: First Baptist Church of Wimberley is not similar when compared to First Baptist Church of Austin.

(2) Example: God in Heaven Ministries is not similar when compared to God in Heaven Church.

**§79.47. Foreign Words Not Translated [~~Nontranslated~~].**

(a) Although entity names may consist, in whole or in part, of words in a foreign language which utilize letters of the Roman alphabet, such words will not be translated for purposes of determining entity name availability.

(1) Example: Tejas Enterprises, Inc., is not similar when compared to Texas Enterprises, Inc.

(2) Example: Casa Blanca Productions, Inc., is not similar when compared to White House Productions, Inc.

(b) Where the difference in the names consists in the use or omission of different particles of speech, although in a foreign language, the names will be considered deceptively similar.

(1) Example: Las Brisas Corp. is deceptively similar when compared to Brisas, Inc.

(2) Example: La Boutique, Inc., is deceptively similar when compared to Le Boutique, Co.

**§79.48. Matters Not Considered.**

Only the proposed entity name, the current names of active (not revoked, cancelled, merged, dissolved, withdrawn, terminated, or forfeited) entities, name reservations, and name registrations for entities on file are considered in determining the availability of the entity name for purposes of filing with the secretary of state. Among matters not considered are the following:

(1) whether the purpose of a proposed entity is the same as or similar to the purpose of an existing entity;

(2) whether the entities will be carrying out activities in the same or nearby locations;

(3) whether an analogous situation has previously been acted upon by the Corporations Section;

(4) whether an "opinion" as opposed to a final determination has previously been expressed by an employee of the secretary of state in response to an oral or written request;

(5) whether an existing entity is actively engaged in business, or has a telephone listing, or a location of a place of business;

(6) whether an existing entity is about to change its name, or be terminated [~~dissolved~~], or merged out of existence;

(7) whether a response to an inquiry can be obtained from an existing entity;

(8) whether the applicant has ordered stationery, opened a bank account, signed a contract, or otherwise altered his position in the expectation, hope, or belief that the proposed name would be available;

(9) whether the applicant is more or less important, extensive, widely known, or influential than an existing entity;

(10) whether the applicant has a prior or superior right to the use of a name apart from what might be shown on inspection of the names of active entities on file in the entity records of the secretary of state;

(11) whether infringement or unfair trade practice has occurred or might occur;

(12) whether an existing entity has filed for or intends to file for bankruptcy; or

(13) whether an applicant's submission of a document relating to the entity name at issue was prior to the submission of the document effecting the conflicting existing name.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**1 TAC §§79.34, 79.51, 79.52**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

**STATUTORY AUTHORITY**

The repeal of §§79.34, 79.51, and 79.52 is proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 5 of the Code is affected by the repeal.

**§79.34. Words of Incorporation or Organization.**

**§79.51. Limited Partnerships.**

**§79.52. Limited Liability Companies.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER E. DELAYED EFFECTIVE DATES

### 1 TAC §§79.71 - 79.73

#### STATUTORY AUTHORITY

Amendments to §§79.71 - 79.73 are proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 4 of the Code is affected by the amendments.

#### *§79.71. Determining the Date of the 90th Day after the Date of Filing.*

(a) For purposes of filing documents which will become effective upon the occurrence of events or facts that may occur in the future pursuant to §4.052 and §4.054 of the Texas Business Organizations Code [the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Section 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 10.07], the date of the 90th day after the date of filing shall be deemed to be 90 days after the document is delivered in person or placed in the United States post office or in the hands of a common or contract carrier properly addressed to the Office of the Secretary of State. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the document may show by competent evidence that the actual date of posting was to the contrary.

(b) If a document submitted with a delayed effective condition pursuant to §4.052 and §4.054 of the Texas Business Organizations Code [the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Section 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07], does not conform to law, it will be returned to sender. When the document is corrected and resubmitted, the date of the 90th day after the date of filing may be recalculated and restated in the document to be 90 days after the document is resubmitted by delivery in person or placement in the United States post office or in the hands of a common or contract carrier properly addressed to the Office of the Secretary of State. The postmark or receipt mark generated in connection with the resubmission (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the document may show by competent evidence that the actual date of posting of the resubmission was to the contrary. The secretary of state will refer to the contents of the document to determine the date of the 90th day from the date of filing or refiling.

(c) To calculate the date of the 90th day from the date of filing, refer to calendar days as set forth in §71.83(3) of this title (relating to Definitions) [§71.5 of this title (relating to Times for Taking Action)].

#### *§79.72. Statement Regarding Delayed Effective Condition.*

(a) Contents. Pursuant to §4.055 of the Texas Business Organizations Code [the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Section 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07], when a condition triggering the effectiveness of a document filing has been satisfied or waived, a statement regarding the delayed effective condition must be submitted to the secretary of state. Such statement must contain the following information:

- (1) the name of the business entity;
- (2) the charter or file number of the entity;
- (3) the document to which the statement applies;
- (4) the date of filing of the document to which the statement applies;
- (5) the date on which the condition was satisfied or waived; and

(6) the signature required by §4.001 of the Texas Business Organizations Code. [the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Section 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07.]

(b) Timeliness. Pursuant to §4.055 of the Texas Business Organizations Code [the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Section 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07], the statement regarding the delayed effective condition should be filed in the Office of the Secretary of State by the date of the 90th day from the date of filing as defined in §79.71 of this title (relating to Determining the Date of the 90th Day after the Date of Filing). Statements regarding the delayed effective condition received after the date of the 90th day from the date of filing will be filed for record; however, the secretary of state will not determine substantial compliance with the provisions of §4.055 [the statutes referenced in this section].

#### *§79.73. Documents with Delayed Effective Dates.*

(a) Upon the filing of a document with a delayed effective date, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, the future date on which the document will be effective or a code indicating that the effectiveness is based on a future condition, and the name of the surviving entity or entities, if applicable. In addition, at the time of such filing:

(1) the status of any domestic entity on file with the secretary of state that is converting, merging out of existence, or terminating [dissolving], will be changed from active to inactive, and the status of any foreign entity withdrawing or terminating its registration [certificate] will be changed from active to inactive;

(2) the status of any domestic entity to be created and filed with the secretary of state by the terms of a plan of merger, plan of conversion, or certificate of formation [articles of incorporation, articles of organization, or a certificate of limited partnership], or the status of any foreign entity registered [obtaining a certificate authorizing the foreign entity] to transact business in Texas shall appear in the active records of the secretary of state; and

(3) any filings making amendments to a certificate of formation or application for registration [articles of incorporation, articles of organization, a certificate of limited partnership, or a certificate authorizing a foreign entity to transact business in Texas] will be recorded in the records of the secretary of state.

(b) Upon filing of the document:

(1) the name of any domestic entity on file with the secretary of state which is converting, merging out of existence, or terminating ~~[dissolving]~~, or the name of any foreign entity withdrawing or terminating its registration ~~[its certificate of authority]~~ will not appear in the active records and will not be a bar to reservation or registration of an entity name or creation of an entity under a name which is the same as, deceptively similar to, or similar to the name of the converting, merging, or terminating ~~[dissolving]~~ domestic entity or the withdrawing or terminating foreign entity;

(2) the name of any domestic entity to be created and filed with the secretary of state by the terms of a plan of merger, plan of conversion, or certificate of formation ~~[articles of incorporation; articles of organization; or a certificate of limited partnership]~~, or the name of any foreign entity registered ~~[obtaining a certificate authorizing the foreign entity]~~ to transact business in Texas will appear in the active records of the secretary of state and will be a bar to reservation or registration of any entity name or creation of an entity under a name which is the same as, deceptively similar to, or similar to the name of an entity to be created or authorized to transact business in Texas by one of the document filings listed in this section; and

(3) if a document filing provides for a change of name of an entity previously on file with the secretary of state, the new name of the entity will appear in the active records of the secretary of state and will be a bar to reservation or registration of any entity name or creation of an entity under a name which is the same as, deceptively similar to, or similar to any new name of the entity as provided in the document filing;

(4) if a document filing provides for an amendment to the certificate of formation or application for registration ~~[articles of incorporation; articles of organization; a certificate of limited partnership; or a certificate authorizing a foreign entity to transact business in Texas]~~, the secretary of state will change the computer records to reflect any amendments to information which may be obtained from the computer database (e.g., authorized stock, registered agent/registered office, the name of a general partner).

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## SUBCHAPTER F. EFFECT OF FILINGS

### 1 TAC §79.81

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#### STATUTORY AUTHORITY

The repeal of §79.81 is proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 10 of the Code are affected by the repeal.

#### §79.81. *Conversion Filings.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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### 1 TAC §79.81, §79.82

#### STATUTORY AUTHORITY

New §79.81 and amendments to §79.82 are proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 10 of the Code are affected by the amendments and new section.

#### §79.81. *Conversion Filings.*

(a) Upon filing of a conversion document where the converting entity is a domestic or foreign filing entity, the computer records of the secretary of state relating to the converting entity will be changed to show the filing of the conversion document; the date of the filing; the future date on which the document will be effective or a code indicating that the effectiveness is based on a future condition, if applicable; and, for domestic converting entities, the name of the converted entity. In addition, if the converted entity is a domestic filing entity, the converted domestic entity shall appear in the active records of the secretary of state indexed under an applicable file number and type code.

(b) Upon filing of a conversion document, the status will be changed as follows:

(1) if the converting entity is a domestic filing entity, the status of the converting entity will be changed from active to inactive;

(2) if the converting entity is a foreign filing entity and the converted entity is a domestic filing entity, the status of the converting entity will be changed from active to inactive;

(3) if the converting entity is a foreign filing entity and the converted entity is not a domestic filing entity, the status of the converting entity will not be changed upon filing of a conversion document. In such a case, the converting entity may withdraw its registration prior

to filing the conversion document or terminate its registration concurrently with or after filing the conversion document. If the converted entity is a foreign filing entity, the converting entity may transfer the registration to the converted entity by amendment to the registration.

*§79.82. Abandonment of Document.*

If a document filing is abandoned in accordance with a statutory provision for abandonment, the secretary of state:

(1) will change the status of all the entities filed with the secretary of state which would have merged out of existence, terminated [dissolved], or withdrawn to active on the computer records of the agency and record the filing of the abandonment. If the names of these entities are not available, the entities must file certificates [articles] of amendment or take other action to change the entity name or bring the name into compliance with applicable statutory provisions as a condition of acceptance of the abandonment;

(2) will change the status of all entities that would have been created and filed or authorized to transact business in Texas with the secretary of state by the terms of the document filing to inactive on the computer records of the agency;

(3) will change the status of a converted entity that would have been created and filed in Texas with the secretary of state by the terms of the certificate [articles] of conversion to inactive on the computer records of the agency; and

(4) will change the status of a converting domestic entity filed with the secretary of state to active on the computer records of the secretary of state. If the name of the entity is not available, the entity must file a certificate [articles] of amendment or take other action to change the entity name or bring the entity name into compliance with applicable statutory provisions as a condition of acceptance of the abandonment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

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For further information, please call: (512) 463-5562



## CHAPTER 80. UNINCORPORATED BUSINESS ENTITIES

The Office of the Secretary of State proposes to amend §§80.1 - 80.4, 80.7, and 80.21 - 80.26 and to repeal §§80.5, 80.6, and 80.27 - 80.29, concerning Unincorporated Business Entities. The amendments are proposed in anticipation of the January 1, 2010 mandatory effective date of the Texas Business Organizations Code. In anticipation of the mandatory effective date, references to outdated statutes are deleted and references to the Texas Business Organizations Code are inserted. The amendments also clarify the language of the rules, correct capitalization, and provide references to and an internet site address for access to secretary of state forms for business entity filings.

Section 80.1 addresses application and naming requirements for Texas limited liability partnerships. Proposed amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references. Proposed subsection (a) includes a reference to the form number and internet address for the secretary of state application form. The amendments clarify the naming requirements and the caveat regarding name availability review in subsection (b).

Section 80.2 addresses application and naming requirements for foreign limited liability partnerships. Proposed amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references. Proposed subsection (a) includes a reference to the form number and internet address for the secretary of state application form. Proposed subsection (a) also expressly recognizes the Texas Business Organizations Code requirement that foreign limited liability partnership applications include the date the limited liability partnership began or will begin to transact business in Texas. The amendments clarify the naming requirements and the caveat regarding name availability review in subsection (b). Subsection (d) is deleted because it is redundant of concurrently proposed 1 TAC §79.28. Consistent with the deletion, subsections (e) and (f) are renumbered as (d) and (e).

Section 80.3 addresses administrative review of limited liability partnership filings by the secretary of state. Subsections (a) and (c) are deleted because they are addressed in 1 TAC §79.21 and redundant of 1 TAC §79.9(b), as proposed elsewhere in this issue. Amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references.

Section 80.4 addresses amendment, change, or correction to limited liability partnership filings. Amendments update the rule to use the terminology found in the Texas Business Organizations Code. Proposed §80.4 includes a reference to the form numbers and internet address for the secretary of state amendment forms. Subsection (b) is deleted because it is obsolete; the Texas Business Organizations Code addresses the issue. Subsection (c) is deleted because it is redundant of 1 TAC §79.24(b).

Section 80.5, regarding termination of registration, is repealed. Termination of limited liability partnership registration is addressed by §§9.011 - 9.012 of the Texas Business Organizations Code.

Section 80.6, regarding revocation of documents, is repealed. The section is obsolete due to an amendment to §405.033 of the Texas Government Code, which used to provide the secretary of state authority to revoke a filing on behalf of only a corporation, but now covers other types of entities as well.

Section 80.7 addresses foreign limited liability limited partnerships. Amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references. Amendments also provide notice that §9.054 and §152.910 of the Texas Business Organizations Code permit the assessment of late filing penalties against both the limited liability partnership registration and the limited partnership registration.

Section 80.21, regarding statements appointing an agent for service of process, is amended to use capitalization consistent with

other secretary of state rules. Proposed subsection (a) also includes a reference to the form number and internet address for the secretary of state form for appointing an agent for service of process. Subsection (d) is deleted because it is redundant of 1 TAC §79.3.

Section 80.22, regarding amendments to statements appointing an agent for service of process, is amended to use capitalization consistent with other secretary of state rules. Proposed subsection (a) also includes a reference to the form number and internet address for the secretary of state form for amending a statement appointing an agent for service of process. Subsection (d) is deleted because it is redundant of 1 TAC §79.3.

Section 80.23, regarding cancellation of a statement appointing an agent for service of process, is amended to use capitalization consistent with other secretary of state rules. Proposed subsection (a) also includes a reference to the form number and internet address for the secretary of state form for cancelling a statement appointing an agent for service of process.

Section 80.24, regarding resignation of a person appointed as agent for service of process, is amended to use capitalization consistent with other secretary of state rules. Proposed subsection (a) also includes a reference to the form number and internet address for the secretary of state form for resignation of a person appointed as agent for service of process. Subsection (d) is deleted because it is redundant of 1 TAC §79.3.

Section 80.25, regarding authorized agents, is amended to use capitalization consistent with other secretary of state rules.

Section 80.26, regarding nonprofit association names, is amended to use capitalization consistent with other secretary of state rules. Proposed amendments also correct outdated references to the Texas Business and Commerce Code and delete an incorrect parenthetical reference to the topic of other secretary of state rules.

Section 80.27, regarding the address of an appointed agent, is repealed. The section is redundant of 1 TAC §79.28.

Section 80.28, regarding the date of filing of documents, is repealed. The section is redundant of 1 TAC §79.9(b), as proposed elsewhere in this issue.

Section 80.29, regarding revocation of statement of appointment, amendment, or cancellation, is repealed. The section is obsolete due to an amendment to §405.033 of the Texas Government Code, which used to provide the secretary of state authority to revoke a filing on behalf of only a corporation, but now covers other types of entities as well.

#### FISCAL NOTE

Leigh A. Joseph, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the sections are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

#### PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Joseph has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to view the rules as corrected. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

#### COMMENTS

Comments on the proposed amendments, repeals and new rules may be submitted in writing to: Leigh A. Joseph, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, November 23, 2009.

### SUBCHAPTER A. LIMITED LIABILITY PARTNERSHIPS

#### 1 TAC §§80.1 - 80.4, 80.7

##### STATUTORY AUTHORITY

The amendments to §§80.1 - 80.4 and 80.7 are proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4, 5, 9, 152, and 153 of the Code are affected by the amendments.

*§80.1. Application for Registration as a [Registered] Limited Liability Partnership.*

(a) Initial application. To register as a [become a registered] limited liability partnership, a partnership must comply with §§152.802 - 152.804 and Chapter 4 of the Texas Business Organizations Code [the Texas Revised Partnership Act, Texas Civil Statutes, Article 6132b, §3.08]. The secretary of state has promulgated a form for this purpose; however, use of such form is not mandatory. See Form 701, available at [http://www.sos.state.tx.us/corp/forms\\_boc.shtml](http://www.sos.state.tx.us/corp/forms_boc.shtml). Applications submitted for filing with the secretary of state must be executed by a majority in interest of the partners or by one or more partners authorized by a majority in interest of the partners and must contain the following information:

- (1) the name of the partnership;
- (2) the federal tax identification number of the partnership;
- (3) the street address of its principal office in this state and outside this state, as applicable;
- (4) the number of partners at the date of application; and
- (5) a brief statement of the business in which the partnership engages.

(b) Name of the partnership. The name of the [registered] limited liability partnership shall contain the phrase [words] "[registered] limited liability partnership" or an [the] abbreviation thereof ["L.L.P." as the last words or letters of its name]. In addition to the limited liability partnership designation, names of limited liability partnerships that are organized as limited partnerships must also include the word "limited" or the phrase "limited partnership," or an abbreviation thereof. When processing a limited liability partnership registration, the [The] secretary of state does not review the name of the partnership, or a change of name, to determine whether the name conforms with the entity name availability rules of §§79.30 - 79.54 of this title [(relating to Corporations)]. Names of limited liability partnerships that are organized as limited partnerships, however, will be reviewed for availability when the secretary of state processes the separate limited partnership certificate of formation.

(c) Federal tax identification number. A partnership which has applied for, but not obtained, a federal tax identification number at the

time of submission may provide a statement to that effect in its application for registration. Once the partnership has obtained its federal tax identification number, the partnership shall amend its application for registration to provide the identification number required under §152.802(a)(1)(B) of the Texas Business Organizations Code and subsection (a)(2) of this section ~~§3-08(b)~~.

§80.2. Application for Registration of a Foreign Limited Liability Partnership [Statement of Foreign Qualification].

(a) Initial statement. To transact business in Texas, a foreign limited liability partnership must file an application for registration that complies ~~comply~~ with §152.905 and Chapters 4 and 9 of the Texas Business Organizations Code [the Texas Revised Partnership Act, Texas Civil Statutes, Article 6132b, §10-02]. The secretary of state has promulgated a form for this purpose; however, use of such form is not mandatory. See Form 307, available at [http://www.sos.state.tx.us/corp/forms\\_boc.shtml](http://www.sos.state.tx.us/corp/forms_boc.shtml). Applications submitted for filing with the secretary of state must be executed by a majority in interest of the partners or by one or more partners authorized by a majority in interest of the partners and must contain the following information:

- (1) the name of the partnership;
- (2) the federal tax identification number of the partnership;
- (3) the state of formation and the date of its initial registration as a limited liability partnership in that state;
- (4) the date the limited liability partnership began or will begin to transact business in Texas;
- (5) ~~[(4)]~~ a statement that the foreign limited liability partnership validly exists as a limited liability partnership under the laws of the state of its formation;
- (6) ~~[(5)]~~ the street address of a partnership office in Texas and the street address of the partnership's chief executive office;
- (7) ~~[(6)]~~ the street address of its proposed registered office in Texas and the name of its proposed registered agent in Texas at such address;
- (8) ~~[(7)]~~ a statement that the partnership appoints the secretary of state as its agent for service of process under the circumstances set forth in §5.251 of the Texas Business Organizations Code [§10-01(k), Texas Revised Partnership Act];
- (9) ~~[(8)]~~ the number of partners in Texas at the date of application; and
- (10) ~~[(9)]~~ a brief statement of the business in which the partnership engages.

(b) Name of the partnership. The name of the ~~registered~~ limited liability partnership shall contain the phrase ~~words "registered limited liability partnership" or~~ "limited liability partnership" or an abbreviation thereof ~~[the abbreviations "R.L.L.P.," "L.L.P.," "RLLP," or "LLP" as the last words or letters of its name]~~. In addition to the limited liability partnership designation, names of limited liability partnerships that are organized as limited partnerships must also include the word "limited" or the phrase "limited partnership," or an abbreviation thereof. When processing a limited liability partnership registration, ~~the [The]~~ secretary of state does not review the name of the partnership, or a change of name, to determine whether the name conforms with the entity name availability rules of §§79.30 - 79.54 of this title ~~[(relating to Corporations)]~~. Names of limited liability partnerships that are organized as limited partnerships, however, will be reviewed for availability when the secretary of state processes the separate limited partnership application for registration.

(c) Federal tax identification number. A partnership which has applied for, but not obtained, a federal tax identification number at the time of submission may provide a statement to that effect in its application for registration. Once the partnership has obtained its federal tax identification number, the partnership shall amend its application for registration to provide the identification number required under §9.007(b)(2) of the Texas Business Organizations Code and subsection (a)(2) of this section ~~§10-02~~.

~~[(d)]~~ Registered Office. The registered office address of the limited liability partnership must include a street or building address for purposes of providing the public with notice of the physical location at which process may be served on the registered agent; a post office box or lock box alone is not a sufficient address for the registered office. The address of a commercial business which provides "private mail box" services is not sufficient as a registered office address, unless the commercial enterprise is the business of the designated registered agent. If the registered office is in a city with a population of less than 5,000, the secretary of state will accept an address other than a street address for the registered office.]

(d) ~~[(e)]~~ Fee. The fee for filing a new or renewal application for registration ~~[a statement of foreign qualification or a renewal of foreign qualification]~~ is \$200 per partner in Texas, but not less than \$200 and not more than \$750. In the case of a limited liability limited partnership, calculation of the filing fee would be determined by the number of general, not limited, partners in Texas at the time of submission.

(e) ~~[(f)]~~ Partners in Texas. For purposes of this section, a partner is considered to be in Texas if:

- (1) the partner is a resident of the state;
- (2) the partner is domiciled or located in the state;
- (3) the partner is licensed or otherwise legally authorized to perform the services of the partnership in this state; or
- (4) the partner, or a representative of the partnership working under the direct supervision or control of the partner, will be providing services or otherwise transacting the business of the partnership within the state for a period of more than 30 days.

§80.3. Administrative Review.

~~[(a)]~~ The secretary of state will file for record a completed, properly executed initial application for registration, statement of foreign qualification, renewal of registration or statement, withdrawal, or articles of amendment when the appropriate filing fee has been remitted and all required information is set forth in the document.]

~~[(b)]~~ The secretary of state will not determine substantial compliance with the provisions of the Texas Business Organizations Code ~~[Texas Revised Partnership Act]~~, nor will the secretary of state determine whether a domestic limited liability partnership meets the insurance or financial responsibility requirements of §152.804 of the Texas Business Organizations Code ~~[such Act, §3-08(d)]~~.

~~[(c)]~~ The date of filing of any limited liability partnership document that satisfies the minimal statutory requirements for filing and for which the filing fee has been paid will be the same date as the date of receipt. If a document does not conform to law, it will be returned to sender. When the document is corrected and resubmitted, the date of filing of the document will be the same date as the date of the last receipt. The date of filing may not be a date prior to the date on which the document is found to comply with the applicable statutory filing requirements.]

§80.4. Amendment, Change, or Correction.

~~[(a)] An application for registration, [statement of foreign qualification,] renewal, amendment or withdrawal may be amended or corrected by filing a certificate [articles] of amendment in duplicate, executed in the manner of an initial application [or qualification], and accompanied by the required filing fee. In the case of a domestic limited liability partnership, the filing fee for an amendment is \$10, plus, if the amendment increases the total number of partners, \$200 for each partner added by the amendment. In the case of a foreign limited liability partnership, the filing fee for an amendment is \$10, plus, if the amendment increases the total number of partners in this state, \$200 for each partner added by the amendment, but not to exceed \$750. The secretary of state has promulgated forms for amending the registrations of domestic and foreign limited liability partnerships; however, use of such forms is not mandatory. See Forms 722 and 407, respectively, available at [http://www.sos.state.tx.us/corp/forms\\_boc.shtml](http://www.sos.state.tx.us/corp/forms_boc.shtml).~~

~~[(b)] A foreign limited liability partnership may change its registered agent or registered office address by making an amendment to its statement of foreign qualification pursuant to §10.02(k), Texas Revised Partnership Act or by filing a statement pursuant to §10.05(b) of the Act. The secretary of state has promulgated a form for making an amendment to the statement of foreign qualification for this purpose; however, use of such form is not mandatory.]~~

~~[(c)] The secretary of state will not refund any portion of a filing fee upon the subsequent submission and filing of articles of amendment correcting the information upon which the filing fee was based.]~~

**§80.7. Foreign Limited Liability Limited Partnerships.**

~~A foreign limited partnership that is subject to registration under the provisions of §9.001 of the Texas Business Organizations Code [§9.02(a) of the Texas Revised Limited Partnership Act] and that has the status of a [registered] limited liability partnership under the laws of a state other than Texas also must file an application for registration [a statement of foreign qualification] under §152.905 and Chapters 4 and 9 of the Texas Business Organizations Code [§10.02 of the Texas Revised Partnership Act] before transacting business in Texas. Late filings fees pursuant to §9.054 of the Texas Business Organizations Code may be assessed against both the limited liability partnership application for registration and the limited partnership application for registration.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**1 TAC §80.5, §80.6**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

**STATUTORY AUTHORITY**

The repeal of §80.5 and §80.6 is proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 9 of the Code are affected by the repeal.

**§80.5. Termination of Registration.**

**§80.6. Revocation of Document.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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**SUBCHAPTER B. UNINCORPORATED  
NONPROFIT ASSOCIATIONS**

**1 TAC §§80.21 - 80.26**

**STATUTORY AUTHORITY**

The amendments of §§80.21 - 80.26 are proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 252 of the Code are affected by the amendments.

**§80.21. Statement Appointing an Agent for Service of Process.**

(a) Initial appointment. An unincorporated nonprofit association may file a statement appointing an agent authorized to receive service of process. The secretary of state [Secretary of State] has promulgated a form for this purpose; however, use of such form is not mandatory. See Form 706, available at [http://www.sos.state.tx.us/corp/forms\\_boc.shtml](http://www.sos.state.tx.us/corp/forms_boc.shtml). The statement appointing an agent must contain the following information:

- (1) the name of the nonprofit association;
- (2) the federal tax identification number of the nonprofit association, if applicable;
- (3) the address in this state, including the street address, if any, of the nonprofit association, or its address outside this state, as applicable;
- (4) the name of the person in this state authorized to receive service of process and the person's address, including street address, in this state; and

(5) a statement that the person appointed as agent for the nonprofit association accepts the appointment, as evidenced by the person's execution of the statement to be filed.

(b) Execution. The statement appointing an agent submitted for filing with the secretary of state [~~Secretary of State~~] must be executed by a person authorized to manage the affairs of the nonprofit association, or, if the person is a corporation or other legal or commercial entity, by an officer or other duly authorized representative of the corporation or other legal or commercial entity. The statement appointing an agent also must be signed by the person appointed agent, or, if the person appointed agent is a corporation or other legal or commercial entity, by an officer or other duly authorized representative of the corporation or other legal or commercial entity. The execution of the statement appointing an agent by the person appointed as agent constitutes an acceptance of the appointment.

(c) Fee. The fee for filing a statement appointing an agent is \$25.

~~[(d) Filing. The statement appointing an agent, accompanied by the filing fee, shall be delivered to the Secretary of State. The Secretary of State will endorse on the statement the word "filed," and the month, day, and year of the filing, and place the statement on record. A letter of acknowledgement shall be delivered to the nonprofit association, its designated representative or to its appointed agent. A duplicate "file stamped" copy of the statement appointing an agent will accompany the letter of acknowledgement, provided that a duplicate copy of the document is delivered by the nonprofit association for such purpose.]~~

#### *§80.22. Amendment to Statement Appointing an Agent.*

(a) Amendment. A statement appointing an agent may be amended by filing an amendment to the statement appointing an agent with the secretary of state [~~Secretary of State~~]. The secretary of state [~~Secretary of State~~] has promulgated a form for this purpose; however, use of such form is not mandatory. See Form 707, available at [http://www.sos.state.tx.us/corp/forms\\_boc.shtml](http://www.sos.state.tx.us/corp/forms_boc.shtml). An amendment to the statement appointing an agent must contain the following information:

- (1) the name of the nonprofit association;
- (2) the tax identification number of the nonprofit association, if applicable;
- (3) the part of the statement appointing an agent being amended;
- (4) the amendment; and
- (5) if the amendment changes the name or address of the agent authorized to receive service of process, a statement that the address provided as the address of the appointed agent is accurately shown and that the person appointed as the agent for the nonprofit association accepts the appointment as evidenced by the person's execution of the amendment.

(b) Execution. The amendment to the statement appointing an agent submitted for filing with the secretary of state [~~Secretary of State~~] must be executed by a person authorized to manage the affairs of the nonprofit association, or, if the person is a corporation or other legal or commercial entity, by an officer or other duly authorized representative of the corporation or other legal or commercial entity. An amendment to change the name or address of the agent authorized to receive service of process for the nonprofit association also must be executed by the person appointed as agent, or, if the person appointed agent is a corporation or other legal or commercial entity, by an officer or other duly authorized representative of the corporation or other legal or com-

mercial entity. An amendment changing the appointed agent need not be executed by the withdrawing agent. The execution of an amendment changing the appointed agent for the nonprofit association by the person appointed as a successor agent constitutes an acceptance of the appointment.

(c) Fee. The fee for filing an amendment to the statement appointing an agent is \$5.00.

~~[(d) Filing. The amendment to the statement appointing an agent, accompanied by the filing fee, shall be delivered to the Secretary of State. The Secretary of State will endorse on the amendment the word "filed," and the month, day, and year of the filing, and place the document on record. A letter of acknowledgement shall be delivered to the nonprofit association, its designated representative or to its appointed agent. A duplicate "file stamped" copy of the amendment will accompany the letter of acknowledgement, provided that a duplicate copy of the document is delivered by the nonprofit association for such purpose.]~~

#### *§80.23. Cancellation of Statement Appointing an Agent.*

(a) Notice of Cancellation. A statement appointing an agent may be canceled by filing with the secretary of state [~~Secretary of State~~] a written notice of cancellation. The secretary of state [~~Secretary of State~~] has promulgated a form for this purpose; however, use of such form is not mandatory. See Form 709, available at [http://www.sos.state.tx.us/corp/forms\\_boc.shtml](http://www.sos.state.tx.us/corp/forms_boc.shtml). A notice of cancellation must include the following information:

- (1) the name of the nonprofit association;
- (2) the federal tax identification number of the nonprofit association, if applicable;
- (3) the date of filing of its statement appointing an agent;
- (4) the statement that the nonprofit association cancels its statement appointing an agent; and
- (5) the current street address of the nonprofit association, or its address outside this state, if applicable.

(b) Execution. The notice of cancellation submitted for filing with the secretary of state [~~Secretary of State~~] must be executed by a person authorized to manage the affairs of the nonprofit association, or, if the person is a corporation or other legal or commercial entity, by an officer or other duly authorized representative of the corporation or other legal or commercial entity. The notice of cancellation also must be signed by the appointed agent, or, if the person appointed agent is a corporation or other legal or commercial entity, by an officer or other duly authorized representative of the corporation or other legal or commercial entity.

(c) Fee. The fee for filing a notice of cancellation is \$5.00.

(d) Filing. The notice of cancellation, accompanied by the filing fee, shall be delivered to the secretary of state [~~Secretary of State~~]. The secretary of state [~~Secretary of State~~] will endorse on the notice of cancellation the word "filed," and the month, day, and year of the filing, and place the document on record. A letter of acknowledgement shall be delivered to the nonprofit association, its designated representative or to its appointed agent. A duplicate "file stamped" copy of the notice of cancellation will accompany the letter of acknowledgement, provided that a duplicate copy of the document is delivered by the nonprofit association for such purpose.

#### *§80.24. Resignation of Person Appointed as Agent.*

(a) Notice of Resignation. A person appointed by a nonprofit association as its agent authorized to receive service of process may



resign as its appointed agent by filing a written notice of resignation with the secretary of state [Secretary of State]. The secretary of state [Secretary of State] has promulgated a form for this purpose; however, use of such form is not mandatory. See Form 708, available at [http://www.sos.state.tx.us/corp/forms\\_boc.shtml](http://www.sos.state.tx.us/corp/forms_boc.shtml). The notice of resignation must include the following information:

(1) the name of the nonprofit association which appointed the person as its authorized agent for service of process;

(2) the federal tax identification number of the nonprofit association, if applicable;

(3) a statement that written notice of the resignation was given to the nonprofit association; and

(4) the last known address of the nonprofit association, and the address to which the resigning agent sent written notice to the nonprofit association, as applicable.

(b) Execution. A notice of resignation must be executed by the person resigning as the authorized agent for the nonprofit association, or, if the resigning agent is a corporation or other legal or commercial entity, by an officer or other duly authorized representative of the corporation or other legal or commercial entity.

(c) Fee. There is no fee for filing a notice of resignation.

~~[(d) Filing: A notice of resignation shall be delivered to the Secretary of State. The Secretary of State will endorse on the notice of resignation the word "filed," and the month, day, and year of the filing, and place the document on record. A letter of acknowledgement shall be delivered to the person resigning as the nonprofit association's appointed agent. A duplicate "file stamped" copy of the notice of resignation will accompany the letter of acknowledgement, provided that a duplicate copy of the document is delivered by the resigning agent for such purpose.]~~

#### *§80.25. Authorized Agent.*

An unincorporated nonprofit association may appoint an individual resident of this state, a domestic or foreign corporation, whether for profit or not for profit, a business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity which maintains an address in this state. A nonprofit association may not serve as its own authorized agent. Only one person may be named as the authorized agent in the statement appointing an agent for service of process. The secretary of state [Secretary of State] may not be named as the nonprofit association's authorized agent for service of process in a statement appointing an agent for service of process or any amendment to such statement.

#### *§80.26. Nonprofit Association Name.*

The name of the nonprofit association in a statement appointing an agent should be the name under which the association regularly conducts its activities in this state. The name of the nonprofit association in the statement appointing an agent should be the name as it appears in the nonprofit association's governing documents (the association's constitution, bylaws or regulations) or, if applicable, the name of the association as shown in its assumed name certificate filed pursuant to Business and Commerce Code, Chapter 71 [36]. The nonprofit association may not use the term "corporation" or "incorporated" or an abbreviation of either of those terms in its name. The secretary of state [Secretary of State] does not review the name of the nonprofit association, or a change of name, to determine whether the name conforms with the entity name availability rules of §§79.30 - 79.54 of this title [(relating to Corporations)].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 463-5562



## **1 TAC §§80.27 - 80.29**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

### **STATUTORY AUTHORITY**

The repeal of §§80.27 - 80.29 are proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 4 and 252 of the Code are affected by the repeal.

*§80.27. Address of Appointed Agent.*

*§80.28. Date of Filing.*

*§80.29. Revocation of Statement of Appointment, Amendment, or Cancellation.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 12, 2009.

TRD-200904593

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

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## **CHAPTER 83. LIMITED PARTNERSHIPS**

The Office of the Secretary of State proposes to amend §§83.1, 83.3, and 83.21 - 83.24 and to repeal §§83.2, 83.4, and 83.5, concerning Limited Partnerships. The amendments and repeals are proposed in anticipation of the January 1, 2010 mandatory effective date of the Texas Business Organizations Code. In anticipation of the mandatory effective date, references to outdated statutes are deleted and references to the Texas Business Organizations Code are inserted. The amendments also clarify the language of the rules and provide an internet site address for access to secretary of state forms for business entity filings.

Section 83.1 addresses the filing of partnership agreements. Proposed amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references.

Section 83.2, regarding registered agent and registered office, is repealed. Registered agents and registered offices are addressed by 1 TAC §79.28.

Section 83.3 addresses administrative review of limited partnership filings by the secretary of state. Subsection (a) is deleted because it is addressed in 1 TAC §79.21 and redundant of 1 TAC §79.9(b), as proposed elsewhere in this issue. Amendments update the rule to use the terminology found in the Texas Business Organizations Code.

Section 83.4, regarding late registration fees, is repealed. Subsections (a) and (b) of the section are governed by Chapter 9 of the Texas Business Organizations Code, and subsection (c) is redundant of 1 TAC §79.24(b).

Section 83.5, regarding revocation of documents, is repealed. The section is obsolete due to an amendment to §405.033 of the Texas Government Code, which used to provide the secretary of state authority to revoke a filing on behalf of only a corporation, but now covers other types of entities as well.

Section 83.21 addresses the content of a limited partnership periodic report. Proposed amendments update the rule to use the terminology found in the Texas Business Organizations Code and replace outdated statutory references with corresponding Texas Business Organizations Code references.

Section 83.22 addresses notices relating to the filing of a limited partnership periodic report. Proposed amendments replace outdated statutory references with corresponding Texas Business Organizations Code references.

Section 83.23 addresses the forfeiture of a limited partnership's right to transact business due to failure to file a requested periodic report. Proposed amendments replace outdated statutory references with corresponding Texas Business Organizations Code references. The provision prohibiting a limited partnership in forfeited rights status from amending its formation or registration documents is deleted because the provision is consistent with neither the Texas Business Organizations Code nor secretary of state practice.

Section 83.24 addresses the voluntary submission of a periodic report by a limited partnership. Proposed amendments replace outdated statutory references with corresponding Texas Business Organizations Code references.

#### FISCAL NOTE

Leigh A. Joseph, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the sections are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

#### PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Joseph has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to view the rules as corrected. There will be no effect on small or micro businesses. There is no anticipated economic

cost to persons who are required to comply with the proposed rules.

#### COMMENTS

Comments on the proposed amendments, repeals and new rules may be submitted in writing to: Leigh A. Joseph, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, November 23, 2009.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 1 TAC §83.1, §83.3

##### STATUTORY AUTHORITY

Amendments to §83.1 and §83.3 are proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 3, 4, 9, and 153 of the Code are affected by the amendments.

##### *§83.1. Partnership Agreement May Be Filed.*

A partnership agreement may be filed as a certificate of formation [~~limited partnership~~], if it meets the requirements for filing a certificate of formation [~~limited partnership~~] under §3.005, §3.011 of the Texas Business Organizations Code [~~§2.01 of the Texas Revised Limited Partnership Act~~].

##### *§83.3. Administrative Review.*

[(a)] The secretary of state will file for record a limited partnership certificate, amendment, merger, conversion, or cancellation when the secretary of state determines that the document satisfies the minimum statutory requirements for filing with the secretary of state. The secretary of state will not determine whether the person or persons signing the document were in fact authorized to do so on behalf of the limited partnership.]

[(b)] The secretary of state will not reject the filing of a certificate of formation [~~limited partnership~~] or an application for [~~a certificate of~~] registration by a [~~foreign~~] limited partnership that identifies as one of its general partners an unqualified foreign filing entity [~~corporation or limited liability company~~]. Acceptance of the document does not constitute a determination by the secretary of state that the foreign corporation or limited liability company identified as a general partner has substantially complied with the statutes governing that type of entity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

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For further information, please call: (512) 463-5562

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## 1 TAC §§83.2, 83.4, 83.5

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

### STATUTORY AUTHORITY

The repeal of §§83.2, 83.4, and 83.5 is proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapters 3 and 9 of the Code are affected by the repeal.

§83.2. *Registered Agent and Registered Office.*

§83.4. *Late Filing Fee.*

§83.5. *Revocation of Document.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lorna Wassdorf

Director, Business and Public Filings

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## SUBCHAPTER B. PERIODIC REPORTS

### 1 TAC §§83.21 - 83.24

#### STATUTORY AUTHORITY

Amendments to §§83.21 - 83.24 are proposed under the authority of §12.001 of the Texas Business Organizations Code (Code), which authorizes the secretary of state to adopt procedural rules for the filing of instruments authorized to be filed with the secretary of state under the Code and gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to perform the duties therein imposed upon the secretary of state.

Chapter 153 of the Code is affected by the amendments.

§83.21. *Content.*

(a) The periodic report required by the secretary of state under §153.301 of the Texas Business Organizations Code [~~under §13.05 of the Texas Revised Limited Partnership Act~~] includes information on the registered agent and office, principal office, and the names and addresses of the general partners of the partnership. To the extent possible, the secretary of state will print the information previously recorded by the partnership and request the partnership to mark changes to the preprinted information. Changes to the name of the registered agent and changes to the registered office address, principal office address, and the address of a general partner will be recorded in the secretary of state's database.

(b) Changes to the name of the partnership or to the names of general partners cannot be effected through the filing of the periodic report. Although a periodic report which purports to change the name of the limited partnership or that makes changes, additions, and deletions to the names of general partners will be filed by the secretary of state, the secretary of state will not update the record of the limited partnership to evidence the change of name or change in partners. In order to change the name of the partnership or change, add, or delete the name of a general partner, the partnership must file a certificate of amendment to the certificate of formation or application for registration pursuant to §§3.051 - 3.053, 9.009 of the Texas Business Organizations Code, [~~or registration of limited partnership pursuant to §2.02 and §9.05 of the Texas Revised Limited Partnership Act~~] as applicable.

§83.22. *Notices.*

(a) Notices relating to the filing of a periodic report of a limited partnership under §153.305 of the Texas Business Organizations Code [~~§13.05 of the Texas Revised Limited Partnership Act~~] shall be sent to the registered office address of record with the secretary of state, or in the case of a limited partnership which does not indicate a registered office address, to the last known address or place of business of the limited partnership as it appears on record with the secretary of state.

(b) Notices relating to the forfeiture of right to do business under §153.308 of the Texas Business Organizations Code [~~§13.06 of the Texas Revised Limited Partnership Act~~] shall be sent to the same address specified for the original report, notwithstanding receipt of evidence by the secretary of state that the address specified was an insufficient address or that the mailing of the notice was undeliverable.

(c) The failure of the limited partnership to receive the notices referenced in subsections (a) and (b) of this section does not relieve the limited partnership of the need to file the periodic report pursuant to §153.301 of the Texas Business Organizations Code [~~§13.05 of the Texas Revised Limited Partnership Act~~] or [~~to~~] extend the time within which the report must be filed.

§83.23. *Forfeiture of Right To Transact Business.*

A limited partnership that fails to file the periodic report required under §153.301 of the Texas Business Organizations Code [~~§13.05~~] within 30 days from the date that the report is sent by the secretary of state will forfeit its right to transact business in Texas. [~~While forfeited, the limited partnership may not amend its certificate of limited partnership or certificate of registration until it has been relieved of its forfeiture by filing the report. However, the forfeiture of the limited partnership's right to transact business does not prevent the entity from filing a cancellation of its registration.~~]

§83.24. *Voluntary Submission of a Periodic Report.*

A limited partnership may submit for filing by the secretary of state a periodic report under §153.301 of the Texas Business Organizations Code [~~§13.05 of the Texas Revised Limited Partnership Act~~] when not required to do so by the secretary of state. The voluntary submission of a report under this section does not relieve the limited partnership of the need to file the periodic report or extend the time within which the report must be filed when the report is specifically required from the limited partnership by the secretary of state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 12, 2009.

TRD-200904597

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## TITLE 10. COMMUNITY DEVELOPMENT

### PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

#### CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

##### SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

###### 10 TAC §§255.1, 255.2, 255.4, 255.11

The Texas Department of Rural Affairs proposes amendments to the TxCDBG Program Found in Title 10, Part 6, Chapter 255 of the Texas Administrative Code.

The proposed amendments are to §§255.1, 255.2, 255.4 and 255.11.

Charles S. (Charlie) Stone, Executive Director of the Department, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Stone also has determined that for each year of the first five years the sections are in effect, the public benefit as a result of enforcing the sections will be the equitable allocation of funds to eligible entities in Texas. There will be no cost to small business or individuals as a result of the proposal.

Comments on the proposal may be submitted to Mark Wyatt, Director, Community Development, Texas Department of Rural Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under §487.052 of the Government Code, which provides the Board with the authority to adopt rules concerning the implementation of the Department's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

###### §255.1. General Provisions.

(a) Definitions and abbreviations. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) Department--The Texas Department of Rural Affairs.

~~[(7) Office--The Office of Rural Community Affairs.]~~

(8) - (15) (No change.)

~~[(16) State review committee--The State Community Development Review Committee established pursuant to Texas Government Code, §487.353.]~~

(16) ~~[(17)]~~ Unemployed person--A person between the ages of 16 and 64, inclusive, who is not presently working but is seeking employment.

(17) ~~[(18)]~~ Unit of general local government--An entity defined as a unit of general local government in 42 United States Code §5302(a)(1), as amended.

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TxCDBG to eligible units of general local government in the following program areas:

(1) (No change.)

(2) Texas Capital fund. The Texas Capital Fund (TCF) is administered by the TDA under an interagency agreement with the Department ~~[Office]~~. Applications for the TCF shall be submitted to the TDA.

(3) - (8) (No change.)

(c) Types of applications.

(1) (No change.)

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the Tx-CDBG fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating communities must be primarily accountable to the Department ~~[Office]~~ and the TDA, in instances where the TCF is accessed, for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TxCDBG requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified in the TCF and single jurisdiction applications described in paragraph (1)(A) - (C) of this subsection).

(d) - (e) (No change.)

(f) Citizen Participation.

(1) (No change.)

(2) Application requirements. Prior to submitting a formal application, an applicant for TxCDBG funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to the preparation of its application and a public notice shall be published in a newspaper having general circulation in the city or county notifying the public of the availability of the application for public review prior to submitting its completed application to the Department ~~[Office]~~ and, in the case of TCF applications, to the TDA. The requirements described in this subparagraph are not applicable to applications submitted under the housing infrastructure fund.

(B) - (F) (No change.)

(3) - (5) (No change.)

(g) Appeals. An applicant for funding under the TxCDBG, except for the Texas Capital Fund, may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by Department [Office] staff resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the Department [Office] due to human or computer error.

(C) Other procedural error. The application is not processed by the Department [Office] in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §255.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the Tx-CDBG of the Department [Office] no later than 30 days after the date the announcement of contract awards is published on the Department's [Office's] website. The Department [Office] staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the Executive Director. The Executive Director then considers the appeal within 30 days and makes a decision.

(3) (No change.)

(4) Appeal of Executive Director's Decision to the Board.

(A) If the appealing party is not satisfied with the Executive Director's response to the appeal, it may appeal in writing directly to the Board within seven days after the date of the Executive Director's response. In order to be placed on the next agenda of the Board, the appeal must be received by the Department [Office] at least fourteen days prior to the next scheduled Board meeting. Appeals received after the fourteenth calendar day prior to the Board meeting will be scheduled for the next Board meeting. The Executive Director shall prepare an appeal file for the Board's review based on the information provided. If the appealing party receives additional information after the Executive Director has denied the appeal, but prior to the posting of the appeal, for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the applicant after the written appeal. New information will cause the deadlines in this subparagraph to begin again. The Board will review the appeal de novo and may consider any information properly considered by the Department [Office] in making its prior decision(s).

(B) (No change.)

(C) Possible actions regarding applications. In instances in which the appeal is sustained by the Board could have resulted in an award to the applicant, the application shall be approved by the Board contingent on the availability of funds. If the appeal is denied, the Department [Office] shall notify the applicant of the decision.

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TxCDBG:

(1) - (4) (No change.)

(5) Resolve all outstanding compliance and audit findings related to previously awarded TxCDBG contracts and any other Department [Office] contracts. The applicant can meet this threshold if the applicant is actively participating in the resolution of any outstanding audit and/or monitoring issues by responding with substantial progress on outstanding issues within the time specified in the resolution process.

(6) Submit any past due audit to the Department [Office].

(A) A community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date the Department approves [state review committee meets to approve] funding recommendations [for applications from fund categories scheduled for state review committee review. For applications from fund categories that are not reviewed by the state review committee, a community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date that the state review committee approves funding recommendations]. Applications for the colonia self-help center fund and the disaster relief/urgent need fund are exempt from this threshold.

(B) A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation. This applies to all funding categories under the Texas Community Development Block Grant Program. The colonia self-help centers fund may be exempt from this threshold, since funds for the self-help centers fund is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Texas Department of Housing and Community Affairs for review and recommendation. The disaster relief fund may be exempt from this threshold, but failure to meet this threshold will be forwarded to the Board for review and consideration.

(7) (No change.)

(8) Based on a pattern of unsatisfactory performance on previous TxCDBG contracts, unsatisfactory management and administration of previous TxCDBG contracts, or the presence of evidence that an applicant lacks financial management capacity based on a review of official financial records and audits related to previous TxCDBG contracts, the Department, [Office] or TDA[  ] in the case of [the ] Texas Capital Fund applications, [application] may determine that an applicant is ineligible to apply for TxCDBG funding even though at the application deadline date it meets the threshold and past performance requirements. The Department, [Office] or TDA[  ] in the case of [the] Texas Capital Fund applications, will consider an applicant's performance during the most recent 48 months before an application due date to make the eligibility determination. An applicant would still remain eligible for funding under the disaster relief fund.

(i) Unmet benefits. Actions that may be taken against a contractor by the Department [Office] where the Department [Office] finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) (No change.)

(2) requiring the contractor to reimburse the Department [Office] for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) (No change.)

(j) False information. If an applicant provides false information in any application [its ~~community development fund or planning/capacity building fund application~~] which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the TxCDBG [Office refers the matter to the state review committee for disciplinary action. If the applicant provides false information in a colonia fund, disaster relief fund, small towns environment program fund, or urgent need fund application, the Office] staff shall make a recommendation for action to the Executive Director of the Department. Actions [Office. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate Executive Director. The state review committee makes a recommendation for action to the Executive Director of the Office at its next regularly scheduled meeting. Documentation of false information must be submitted at least ten business days prior to the next regularly scheduled meeting of the state review committee to be considered at that meeting. Recommendations] that the [state review committee or] Executive Director may take [make] include, but are not limited to:

(1) - (2) (No change.)

(3) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate TDA official. Actions that the TDA official may take, in consultation with TxCDBG, include, but are not limited to:

(A) Disqualification of the application and holding the locality ineligible to apply for TCF funding for a period of at least one year not to exceed two program years;

(B) holding the applicant or contractor ineligible to apply for TCF funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(C) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding.

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Department [Office] and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF.

(1) (No change.)

(2) Surveys, including signed tabulation sheets, signed surveys location sheets, all responses, and all non-responses must be submitted to the Department [Office] by the application deadline, for verification and spot-checking.

(3) - (4) (No change.)

(5) A survey that was completed on or after January 1, 2004 for a previous TxCDBG application may be accepted by the Department [Office] for a new application to the extent specified in the most recent application guide for the proposed project.

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income generated by TCF projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from TCF projects will be used by the Department [Office] for eligible TxCDBG activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated

funds, program income, and unused funds from the current year's allocation or from previous years' allocations derived from any TxCDBG Fund, including program income recovered from TCF local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Department [Office] Executive Director, or when applicable, approved by the Board or by the TDA on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; followed by, any awards necessary to resolve appeals under fund categories requiring publication of contract awards in the *Texas Register*; TCF projects, special needs projects, projects in colonias, housing activities, and other projects as determined by the Department [Office] Executive Director. Other purposes or initiatives may be established as a priority use of such funds within existing fund categories by the Board. Should the TxCDBG be required to make payments to HUD to cover any loan payments not made by any recipient of a TxCDBG Section 108 loan guarantee, it would first use any available deobligated funds.

(m) Waivers. The Department [Office] may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's written request for such a waiver if the Department [Office] finds that compelling circumstances exist outside the control of the applicant or contractor which justifies the approval of such a waiver. The Department [Office] shall not waive any provision hereof concerning the TCF program unless written request to do so is received from the Executive Director of the TDA. The provisions of the foregoing sentence shall not apply to contracts other than those awarded and/or administered by the TDA for the Department [Office]. Issues related to audit requirements will be handled by the appropriate agency.

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) (No change.)

(2) Submit to the Department [Office] the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by Tx-CDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open Tx-CDBG contract with an original 24-month contract period and to Tx-CDBG contractors that have reached the end of the 24-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund, the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund (original 24-month contract extended to 36-months). This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(3) (No change.)

(4) Submit to the Department [Office] the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 36-month contract period or a small towns environment program 24-month contract, extended to 36 months, and to TxCDBG contractors that have reached the end of the 36-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the housing infrastructure fund (when the applicant is applying for the housing infrastructure fund competition) and the small towns environment program fund original 36-month contract or original 24-month contract, extended to 36 months. This threshold is not applicable to previously awarded Tx-CDBG contracts under the TCF, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program the microenterprise loan fund, the small business loan fund, and the section 108 loan guarantee pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

~~[(o)]~~ State review committee. The committee shall consult with and advise the Office's Executive Director on the administration and enforcement policies of the TxCDBG; in consultation with the Executive Director and TxCDBG office staff, review and approve grant and loan applications and associated funding awards of eligible counties and municipalities and advise and assist the Office's Executive Director in the allocation of program funds to the applicants; review appeals and submit recommendations for the disposition of such appeals to the Office's Executive Director in accordance with the procedures described of such appeals to the Office's Executive Director in accordance with the procedures described in subsection (g) of this section; and report committee actions concerning these tasks to the Office's Executive Director through the minutes of committee meetings and written reports prepared by Office staff on behalf of the committee.]

~~[(o)]~~ ~~[(p)]~~ Minority hiring/participation. It is the policy of the Department [Office] to encourage minority employment and participation among all applicants under the TxCDBG. All applicants to the TxCDBG are required to submit information documenting the level of minority participation as part of the application for funding.

~~[(p)]~~ ~~[(q)]~~ Revolving loan funds. A Revolving Loan Fund established through program income recovered from a TxCDBG contract must meet the requirements for Revolving Loan Funds described in the TxCDBG Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, TxCDBG contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Department [Office]. The requirement in this section applies to all local Revolving Loan Funds (RLF) established from program income from Texas Capital Fund projects, housing projects and the Small Business Loan Fund. Funds retained in the local RLF must be committed within three years of the original Tx-CDBG contract programmatic close date. Every award from the RLF must be used to fund the same type of activity, for the same business, from which such income is derived. A local Revolving Loan Fund may retain a cash balance not greater than 33 percent of its total cash and outstanding loan balance. If the local government does not comply

with the local RLF requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the State.

~~[(q)]~~ ~~[(r)]~~ Withdrawal of award.

(1) Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based, including failure to maintain compliance with application thresholds in subsection (h)(1) - (4) of this section, within a period ending 90 days after the date of the TxCDBG's award letter to the applicant, the award will be immediately withdrawn by the TxCDBG (excluding the colonia self-help center awards).

(2) Should the applicant fail to execute the Department's [Office's] award contract (excluding Texas Capital Fund and colonia self-help center contracts) within 60 days from the date of the letter transmitting the award contract to the applicant, the award will be withdrawn by the Department [Office].

~~[(r)]~~ ~~[(s)]~~ Funds recaptured from withdrawn awards. For an award that is withdrawn from an application, the Department [Office] follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.

(1) Funds recaptured under the community development fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (1) of this section.

(2) Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (1) of this section.

(3) Funds recaptured under the colonia construction fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colo-

nia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(4) Funds recaptured under the colonia planning fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(5) Funds recaptured under the program year allocation for the colonia economically distressed areas program fund from the withdrawal of an award remain available to potential colonia economically distressed areas program fund applicants during that program year. Any funds remaining from the program year allocation that are not used to fund colonia economically distressed areas program fund applications within twelve months after the Department [Office] receives the federal letter of credit would remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(6) Funds recaptured under the program year allocation for the disaster relief/urgent need fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(7) Funds recaptured under the small towns environment program fund (STEP) from the withdrawal of an award will be made available in the next round of STEP competition following the withdrawal date in the same program year. If the withdrawn award had been made in the last of the two competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the recaptured funds would be available for other TxCDBG fund categories. Any unallocated STEP funds are subject to the procedures described in subsection (l) of this section.

(8) Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(9) For both the community development fund, if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds are considered as deobligated funds, subject to the procedures described in subsection (l) of this section.

(s) [(t)] Readiness to proceed requirements: In order to determine that the project is ready to proceed, the applicant must provide in its application information that:

(1) Identifies the source of matching funds and provides evidence that the applicant has applied for any non-local matching funds, and for local matching funds, evidence that local matching funds would be available.

(2) Provides written evidence of a ratified, legally binding agreement, contingent upon award, between the applicant and the utility that will operate the project for the continual operation of the utility system as proposed in the application. For utility projects that require the applicant or service provider to obtain a certificate of convenience and necessity for the target area proposed in the application, provides written evidence that the Texas Commission on Environmental Quality has received the applicant or service provider's application.

(3) Where applicable, provide a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed.

(t) [(u)] Performance measures. Each applicant for TxCDBG funds and each city or county receiving a contract award shall provide applicable information requested in application guides, the grant contract, or the most recent edition of the TxCDBG project implementation manual that is required by the Department [Office] to report on Community Development Block Grant program performance measures promulgated by the Board, the Texas Legislature, and the U.S. Department of Housing and Urban Development.

(u) [(v)] Street paving activities. Area benefit can be used to qualify street paving activities. However, for street paving activities with multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least 51% of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an application for TxCDBG funds. The only exception to this requirement is street paving eligible under the disaster relief fund.

(v) [(w)] For any award made on or after September 1, 2005, any political subdivision that receives community development block grant program money targeted toward street improvement projects in eligible colonia areas must allocate not less than five percent but not more than 15 percent of the total amount of street improvement money to providing financial assistance to colonias within the political subdivision to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

(w) [(x)] The TxCDBG is under no obligation to approve any changes in a performance statement of a TxCDBG contract that would result in a program year score lower than originally used to make the award if the lower score would have initially caused that project to be denied funding. This does not apply to colonia self-help centers or the Texas Capital Fund.

(x) [(y)] Any applicant's cash match included in the TxCDBG contract budget may not be obtained from any person or entity that provides contracted professional or construction-related services (other than utility providers) to the applicant to accomplish the purpose described in the TxCDBG contract, in accordance with 24 CFR Part 570.

(y) [(z)] If an audit becomes due after the award date, the Department [Office] may withhold the issuance of a contract until it receives a satisfactory audit. If a satisfactory audit is not received by the Department [Office] within four months of the audit due date, the Department [Office] may withdraw the award and re-allocate the funds in accordance with subsection (r) [(s)] of this section (excludes the colonia self-help center awards and Texas Capital Fund awards).

(z) [(aa)] If the Regional Review Committee for a particular region fails to approve, to the satisfaction of the Department [Office], an objective scoring methodology for the 2009 Community Development Fund competition, the Department [Office] will award 2008 Program Year funds in that region for the Community Development Fund and Community Development Supplemental Fund based the state's existing scores under section IV (C)(1)(a-e) of the approved 2007 Texas CDBG Action Plan.

#### §255.2. Community Development Fund.

(a) - (b) (No change.)

(c) Allocation Plan.

(1) (No change.)



(2) Each state planning region is provided with a 2009 program year community development fund target allocation and a 2010 program year community development fund target allocation for applications in the region that are ranked through the 2009 program year regional competitions in accordance with a shared scoring system involving the Department [Office] and the regional review committees.

(A) The community development fund regional allocations for the first and second years of the biennial process are awarded first in each region based on the community development fund selection criteria that includes each regional review committee and the Department [Office] (10% of maximum possible score for each RRC) scoring criteria. Where the remainder of the 2009 program year community development fund target allocation is insufficient to completely fund the next highest ranked applicant, the applicant receives complete funding of the original grant request through either 2009 and 2010 program year funds. The remaining funds from all the target allocations are pooled to fund projects from among the highest ranked, unfunded applications from each of the 24 state planning regions. Selection criteria for such applications will consist of the selection criteria scored by the Department [Office] under this fund. Marginal applicants' community distress scores are recomputed based on the applicants competing in the marginal pool competition only.

(B) (No change.)

(3) (No change.)

(d) Selection procedures.

(1) Prior to the submission deadline specified in the most recent application guide for this fund, each eligible unit of general local government may submit one application to the Department [Office] for funding under the community development fund regional allocations. Two copies of the application must be submitted to the Department [Office].

(2) Upon receipt of an application, the Department [Office] staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding, if ranked. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) - (4) (No change.)

(5) The RRC Guidebook should be adopted by the RRC and approved by TxCDBG staff at least 90 days prior to the application deadline. The selection of the entity responsible for calculating the RRC scores must be identified in the RRC Guidebook and must define the role of each entity selected. The Department [Office] shall be responsible for reviewing all scores for accuracy and for determining the final ranking of applicants once the RRC and TxCDBG scores are summed. The RRC is responsible for providing to the public the RRC scores, while the TxCDBG is responsible for publishing the final ranking of the applications.

(6) Following a final technical review, the Department [Office] staff presents the funding recommendations for the 2009 and 2010 community development fund regional allocations to the state review committee. Department [Office] staff makes a site visit to each of the applicants recommended for funding prior to the completion of contract agreements.

~~{(7) In consultation with the executive director and Tx-CDBG office staff, the state review committee reviews and approves grant and loan applications and associated funding awards of eligible counties and municipalities.}~~

~~{(8) An applicant for a grant, loan, or award under a community development block grant program may appeal a decision of the state review committee by filing a complaint with the Board. The Board will hold a hearing on a complaint filed with the board and render a decision.}~~

(7) ~~{(9)}~~ Upon announcement of the 2009 and 2010 program year contract awards, the TxCDBG [Office] staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the TxCDBG [Office] may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(e) (No change.)

(f) If the Regional Review Committee for a region fails to adopt an Objective Methodology for the Program Year 2009 and 2010 Community Development Fund the following scoring criteria will apply: The RRC's Project Priorities taken from the TxCDBG-approved RRC Scoring Guidelines for the region for the 2007-2008 CD/CDS cycle.

(1) - (3) (No change.)

(4) Project impact (total--175 points).

(A) (No change.)

(B) Other factors that will be evaluated by Department [Office] staff in the assignment of project impact scores within the point ranges for activities include, but are not limited to, the following:

(i) - (xi) (No change.)

(xii) Projects that consider the Department's [Office's] Community Viability Index in establishing the issues to be addressed.

(xiii) (No change.)

(5) - (6) (No change.)

#### §255.4. Planning/Capacity Building Fund.

(a) General provisions. This fund is intended to provide an opportunity for units of general local government to prepare comprehensive community development plans, develop strategies, assess needs, and build or improve local capacity to undertake future community development projects or to prepare other needed planning elements (including telecommunications and broadband needs). All planning projects awarded under this fund must include a section in the final planning document that addresses drought-related water supply contingency plans and water conservations plans. Eligible units of general local government are to be the direct recipients of planning contracts. Units of general local government may submit one application for planning funds annually if all previous planning/capacity building contracts with the Department [Office] have been totally reimbursed by the Department [Office].

(1) - (2) (No change.)

(b) (No change.)

(c) Selection procedures. Scoring and the recommended ranking of projects are done by Department [Office] staff with input from the regional review committees. The application and selection procedures consist of the following steps.

(1) Prior to the application deadline, each eligible jurisdiction may submit one application for funding under the planning/capacity

ity building fund. An applicant may not submit an application under this fund and also under the colonia fund if the proposed activity under each application is the same or substantially similar. One copy of the application should be provided to the applicant's regional review committee and two copies must be submitted to the Department [Office].

(2) Upon receipt of an application, the Department [Office] staff performs an initial review to determine whether the application is complete and whether the activities proposed are eligible for funding. Results of this initial staff review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a planning/capacity building proposal from a jurisdiction within its state planning region. These comments become part of the application file, provided such comments are received by the Department [Office] prior to scoring of the applications.

(4) The Department [Office] staff generate scores on factors related to planning strategy and products. Each application is scored on how the proposed planning activities resolve the identified community development needs of the local government. This information, as well as any comments made by the regional review committee, are used by the Department [Office] staff to generate scores on the planning strategy and products factors.

(5) The Department [Office] generates scores on selection criteria relating to community distress, project design, and planning strategy and products. Scores on the factors in these categories are derived from standardized data from the Census Bureau, Texas Workforce Commission, or from information provided by the applicant.

(6) (No change.)

{(7) The Office staff submits the 2009 program year and 2010 program year funding recommendations to the state review committee. In consultation with the executive director and TxCDBG office staff, the state review committee reviews and approves grant applications and associated funding awards of eligible counties and municipalities.}

(7) [(8)] Upon the announcement of the 2009 and 2010 program year contract awards, the Department [Office] staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(d) Selection criteria. The following is an outline of the selection criteria used by the Department [Office] for selection of the projects under the planning/capacity building fund. Four hundred thirty points are available.

(1) - (5) (No change.)

§255.11. *Small Towns Environment Program Fund.*

(a) - (e) (No change.)

(f) Selection procedures.

(1) During each of the two application rounds, the Department [Office] staff initially evaluate eligible cities or counties that have expressed an interest in using the self-help method and potentially applying for funding under the STEP Fund. Department [Office] staff assess whether self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready along with having the capacity to begin and complete a self-help project. If Department [Office] staff determines that the community meets all of the

STEP threshold criteria then the community is invited to apply prior to the application deadline.

(2) The Department [Office] will not accept an application under the STEP Fund unless this assessment and invitation process is followed.

(3) (No change.)

(4) Following a final technical review, the TxCDBG [Office] staff makes funding recommendations to the Executive Director [executive director] of the Department [Office]. In consultation with the executive director of the Office and TxCDBG office staff, the state review committee reviews and approves grant applications and associated funding awards of eligible counties and municipalities.}]

(5) Upon announcement of contract awards, the Department [Office] staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Department [Office] may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(g) Selection criteria. The following is an outline of the selection criteria used by the Department [Office] for scoring applications under the STEP fund. One hundred twenty (120) points are available. A project must score at least 75 points overall and 15 points under the factor in paragraph (2) of this subsection to be considered for funding.

(1) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 12, 2009.

TRD-200904582

Charles S. (Charlie) Stone

Executive Director

Texas Department of Rural Affairs

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 936-6734



## CHAPTER 256. ADMINISTRATION

### SUBCHAPTER B. GENERAL POLICIES AND PROCEDURES

#### 10 TAC §256.600

The Texas Department of Rural Affairs (the Department) proposes to add new §256.600 to Subchapter B of Chapter 256 to establish a complaint system for the Department. The proposed new rule implements a process by which the Department would handle external complaints. Complaints about the quality of services funded by a Community Development Block Grant (CDBG) contractor or subcontractor would continue to be governed by the CDBG program rules. Complaints regarding activities funded by the Disaster Recovery Division would be handled by the new complaint system.

Charles S. (Charlie) Stone, Executive Director of the Department, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed.

Mr. Stone has also determined that for each year of the first five-year period the sections are in effect the public benefit as a result of enforcing the sections will be the efficient handling of external complaints. There will be no cost to small business or individuals.

Comments on the proposal may be submitted to Ms. Anne O. Reynolds, General Counsel, Texas Department of Rural Affairs, P.O. Box 12877, Austin, TX 78711, telephone: (512) 936-6342. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The new section is proposed under §487.052 of the Government Code, which provides the Board with the authority to adopt rules concerning the implementation of the Department's responsibilities.

No other code, article, or statute is affected by the proposed sections.

§256.600. Department Complaint System.

(a) Purpose. The purpose of this section is to establish the procedures by which external complaints that the department has the authority to resolve are answered.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Complaint--A written complaint that a person believes the department has the authority to resolve, other than a complaint about the quality of services funded by a community development block grant contractor or subcontractor subject to §255.1(f)(4) of this title. Complaints regarding activities funded by the Department's Disaster Recovery Division may be filed in accordance with this section.

(2) Department--The Texas Department of Rural Affairs.

(3) Person--Any individual, other than an employee of the department, and any partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(c) Procedures. A person who wishes to file a complaint must do so in writing. A telephone call is not sufficient to initiate a complaint investigation. A written complaint should be submitted to the department's general counsel or to any employee of the department for submission to the general counsel. The nature of the complaint should be clearly stated and include sufficient details to describe the allegation.

(1) The general counsel or designee shall assign a control number to the complaint, review the complaint, investigate, or cause an investigation to be completed, and submit the department's findings to the executive director of the department.

(2) The department shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of this rule.

(3) The executive director or designee shall either notify the complainant of the resolution of the complaint within 15 business days after the date the general counsel received the complaint or notify the complainant, within such period, of the date the complaint can be resolved.

(4) The executive director or designee shall notify the complainant of the status of the complaint at least quarterly and until the final disposition of the complaint unless the notice would jeopardize an undercover investigation.

(5) An information file about each complaint shall be maintained. The information file must include:

(A) the name of the person who filed the complaint;

(B) the date the complaint was received by the department;

(C) the subject matter of the complaint;

(D) the name of each person contacted in relation to the complaint; and

(E) a summary of the results of the review or investigation of the complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2009.

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Charles S. (Charlie) Stone

Executive Director

Texas Department of Rural Affairs

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For further information, please call: (512) 936-6726



## **TITLE 16. ECONOMIC REGULATION**

### **PART 2. PUBLIC UTILITY COMMISSION OF TEXAS**

#### **CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS**

#### **SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION**

##### **16 TAC §25.43**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.43 relating to Provider of Last Resort (POLR). The amendment replaces the Terms of Service (TOS) required by §25.43(f)(1)(A) - (D) with a new TOS required by §25.43(f)(1)(A) - (D). The POLR rule establishes the requirements for POLR service and ensures that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT), because the customer's REP failed to provide service to the customer or failed to meet its obligations to the independent organization. The proposed amendment will adopt new documents describing the terms of POLR service, which must be provided by REPs serving as POLRs to their customers. These new documents are compliant with amendments to §25.43 made by the commission in Project Number 35769, *Rulemaking Related to Providers of Last Resort*. The rule is a competition rule subject to judicial review

as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 37034 is assigned to this proceeding.

Christine Wright, Senior Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Wright has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the conformance of the TOS to amendments to §25.43 made by the commission in Project Number 35769, by providing accurate information to customers about the terms of POLR service. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the rule. Therefore, no regulatory flexibility analysis is required. There is an economic cost to persons who are required to comply with the section as proposed, because they will be required to prepare new TOS documents, but the benefit to customers is expected to be greater than the cost to POLR REPs.

Ms. Wright has also determined that for each year of the first five years the rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on November 18, 2009, at 10:00 am. The request for a public hearing must be received by November 23, 2009 (30 days after publication).

Initial comments on the proposed rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by November 23, 2009 (30 days after publication). Reply comments may be submitted by December 7, 2009 (45 days after publication). Sixteen copies of comments on the proposed rule are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed new Terms of Service. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 37034.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.106, which requires that the commission designate retail electric providers of last resort; and PURA §39.101, which authorizes the commission to adopt and enforce rules that ensure retail electric customer protections that entitle a customer: to safe, reliable, and reasonably priced electricity, to be served by a provider of last resort that offers a commission-approved standard service package, to be protected from unfair, misleading, or deceptive practices, to other information or protections necessary to ensure high-quality service to customers including minimum service standards relating to customer deposits and

extension of credit, switching fees, levelized billing programs, termination of service, and quality of service, and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.101, and 39.106.

§25.43. *Provider of Last Resort (POLR).*

(a) - (e) (No change.)

(f) Customer information.

(1) The Standard Terms of Service prescribed in subparagraphs (A) - (D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (1)(2) of this section.

(A) Standard Terms of Service, POLR Provider Residential Service:

Figure: 16 TAC §25.43(f)(1)(A)

~~[Figure: 16 TAC §25.43(f)(1)(A)]~~

(B) Standard Terms of Service, POLR Provider Small Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(B)

~~[Figure: 16 TAC §25.43(f)(1)(B)]~~

(C) Standard Terms of Service, POLR Provider Medium Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(C)

~~[Figure: 16 TAC §25.43(f)(1)(C)]~~

(D) Standard Terms of Service, POLR Provider Large Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(D)

~~[Figure: 16 TAC §25.43(f)(1)(D)]~~

(2) (No change.)

(g) - (v) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200904531

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



## SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

### 16 TAC §25.52

The Public Utility Commission of Texas (commission) proposes amendments to §25.52, relating to Reliability and Continuity of Service. The proposed amendments will conform the rule to amendments the 81st Legislature made to the Public Utility Regulatory Act (PURA) §38.005. The proposed amendments delete references to interim system-wide standards that are now obsolete, delete references to a utility's worst 10 percent performing

feeders, and add an enforcement paragraph. Project Number 37387 is assigned to this proceeding.

Mr. Larry Reed, Senior Fuel Analyst, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Reed has determined that for each year of the first five years the proposed rule is in effect the public benefit anticipated as a result of enforcing the section will be to improve service quality and reliability for consumers of electricity. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the rule. Therefore, no regulatory flexibility analysis is required. There may be economic costs to persons who are required to comply with the rule, but the costs are likely to vary from person to person and are difficult to ascertain. However, it is believed that the benefits of the rule will outweigh these costs.

Mr. Reed has also determined that for each year of the first five years the proposed rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the APA §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on November 17, 2009, at 9:30 a.m. The request for a public hearing must be received no later than November 13, 2009 (21 days after publication).

Initial comments on the proposed rule amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by November 13, 2009 (21 days after publication). Sixteen copies of comments to the proposed rule amendments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by November 23, 2009 (31 days after publication). Comments should be organized in a manner consistent with the organization of the rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rule. The commission will consider the costs and benefits in deciding whether to adopt the rule amendments. All comments should refer to Project Number 37387.

Under the authority granted the commission in PURA §38.005(b), the commission may take appropriate enforcement action under this section. The commission proposes to amend §25.52 by adding subsection (f)(3), which provides that "the commission may take appropriate enforcement action under this section, including action against a utility, if the system and feeder performance is not operated and maintained in accordance with this subsection."

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and PURA 38.005, which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers.

Cross Reference to Statutes: PURA §§14.002, 14.003, 31.001, 32.001, 37.151, 38.001, 38.002, and 38.005.

*§25.52. Reliability and Continuity of Service.*

(a) - (b) (No change.)

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) (No change.)

(2) Interruption classifications:

(A) - (B) (No change.)

(C) Outside causes--Interruptions, exclusive of major events, that are caused by influences arising outside of the distribution system, such as generation, transmission, or substation outages. Outside causes may result in forced or scheduled interruptions.

(D) (No change.)

(3) - (6) (No change.)

(d) - (e) (No change.)

(f) System reliability. Reliability standards shall apply to each utility, and shall be limited to the Texas jurisdiction. A "reporting year" is the 12-month period beginning January 1 and ending December 31 of each year.

(1) System-wide standards. The standards shall be unique to each utility based on the utility's performance, and may be adjusted by the commission if appropriate for weather or improvements in data acquisition systems. [Interim standards shall be established for the 24-month period ending December 31, 1999. The interim standards shall be the system-wide average of the 1998 and the 1999 reporting years for each reliability index. The interim standards will be adjusted based on performance during the 36-month period ending December 31, 2000.] The [resulting] standards will be the average of the utility's performance from the later of [three] reporting years 1998, 1999, and 2000 or the first three reporting years the utility is in operation.

(A) SAIFI. Each utility shall maintain and operate its electric distribution system so that its [the SAIFI value for the 2000 reporting year does not exceed the interim system-wide SAIFI standard by more than 10%. For the 2001 reporting year and thereafter, the] SAIFI value shall not exceed its [the] system-wide SAIFI standard by more than 5.0%.

(B) SAIDI. Each utility shall maintain and operate its electric distribution system so that its [the SAIDI value for the 2000 reporting year does not exceed the interim system-wide SAIDI standard by more than 10%. For the 2001 reporting year and thereafter, the] SAIDI value shall not exceed its [the] system-wide SAIDI standard by more than 5.0%.

(2) Distribution feeder performance. The commission will evaluate the performance of distribution feeders with ten or more customers after each reporting year [beginning with the performance in the 2000-reporting year].

[(A) Each utility shall maintain and operate its distribution system so that no distribution feeder with more than ten customers sustains a SAIDI or SAIFI value for a reporting year that is among the highest (worst) 10% of that utility's feeders for any two consecutive reporting years.]

[(B)] Each utility shall maintain and operate its distribution system so that no distribution feeder with ten or more [more than ten] customers sustains a SAIDI or SAIFI value for a reporting year that

is more than 300% greater than the system average of all feeders during any two consecutive reporting years.

(3) Enforcement. The commission may take appropriate enforcement action, including action against a utility, if the system and feeder performance is not operated and maintained in accordance with this subsection. In determining the appropriate enforcement action, the commission shall consider:

- (A) the feeder's operation and maintenance history;
- (B) the cause of each interruption in the feeder's service;
- (C) any action taken by a utility to address the feeder's performance;
- (D) the estimated cost and benefit of remediating a feeder's performance; and
- (E) any other relevant factor as determined by the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 8, 2009.

TRD-200904528

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 936-7223



## SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

### 16 TAC §25.94

The Public Utility Commission of Texas (commission) proposes new §25.94, relating to Report on Infrastructure Improvement and Maintenance. The rule will require an electric utility to submit a report to the commission by May 1st of each year that provides certain information concerning transmission and distribution hardening and maintenance and emergency operations activities. Project Number 37472 is assigned to this proceeding.

Regina Chapline, Infrastructure Policy Analyst in the Infrastructure and Reliability Division, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Chapline has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be: the implementation of Public Utility Regulatory (PURA) §38.101, which requires an electric utility to file a report by May 1st of each year that includes the information required by the section; and the provision of information concerning transmission and distribution hardening and maintenance and emergency operations activities of electric utilities. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the rule. Therefore, no regulatory flexibility analysis is required. There will be small

economic costs to electric utilities, which are required to prepare and file the report required by the rule. It is believed the benefits of the rule will outweigh these costs.

Ms. Chapline has also determined that for each year of the first five years the rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, November 18, 2009, at 10:00 a.m. The request for a public hearing must be received by November 13, 2009 (21 days after publication).

Initial comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by November 13, 2009 (21 days after publication). Reply comments may be submitted by November 18, 2009 (25 days after publication). Sixteen copies of comments on the proposed rule are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rules. All comments should refer to Project Number 37472.

The new section is proposed under the PURA §14.002, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.001, which gives the commission the general power to regulate and supervise the business of each public utility; §14.003, which gives the commission the power to require a public utility to file a report relating to the public utility; and §38.101 which requires an electric utility to submit a report to the commission by May 1st of each year that provides certain information concerning transmission and distribution hardening and maintenance and emergency operations activities.

Cross Reference to Statutes: PURA §§14.001, 14.002, 14.003, and 38.101.

#### §25.94. Report on Infrastructure Improvement and Maintenance.

(a) Purpose. This rule is intended to ensure the provision of safe, continuous, and adequate electric transmission and distribution service for operational as well as emergency purposes.

(b) Application. This rule applies to all electric utilities.

(c) Reports. By May 1st of each year, an electric utility shall file with the commission a report that contains the information described in subsection (d) of this section.

(d) The utility shall include in the report, for the period beginning April 1 of the immediately preceding year through March 31 of the current year, a description of the utility's activities related to:

(1) Identifying areas in its service territory that are susceptible to damage during severe weather or natural disasters and hardening transmission and distribution facilities in those areas;

(2) Providing vegetation management;

(3) Inspecting its transmission and distribution facilities;

and

(4) Preparing for emergency operations for the upcoming year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2009.

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Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

#### SUBCHAPTER A. ADMINISTRATION

##### 16 TAC §402.101

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.101 (Advisory Opinions). The purpose of the proposed amendments is to make the rule consistent with changes to the Bingo Enabling Act, Texas Occupations Code §2001.108, resulting from recent legislation H.B. No. 1474 effective October 1, 2009, and to clarify the time periods for requesting and providing additional information.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is language in the rule that is consistent with the Bingo Enabling Act and clarifies time periods for requesting and providing additional information.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Tuesday, November 3, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to

enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

##### §402.101. Advisory Opinions.

(a) (No change.)

(b) Request for an Advisory Opinion

(1) An officer, bingo chairperson, or authorized representative of a license holder or an attorney, accountant, or bookkeeper employed or retained by a license holder may request from the Commission an advisory opinion regarding compliance with this chapter and the rules of the Commission.

(2) [(4)] A person requesting an advisory opinion shall do so by sending the request in writing addressed to Advisory Opinion, Charitable Bingo Operations Division, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630 or by e-mail to [Advisory.Opinion@lottery.state.tx.us](mailto:Advisory.Opinion@lottery.state.tx.us).

(3) [(2)] A request for an advisory opinion shall describe a specified factual situation. The request shall make clear that it is a request for an advisory opinion under Occupations Code, §2001.059, and state in sufficient detail all facts upon which the request for opinion is based to permit the Commission to provide a response to the request and shall contain the name and address of the person requesting the opinion. The request may be accompanied by supporting legal arguments and citations of law or rules as the requesting person deems pertinent. Any other person may also submit legal arguments, citations of law or rules, or legal briefs within 30 days of the date of the request for opinion.

(c) Request for Additional Information

(1) If the Commission determines that the request for an advisory opinion does not contain sufficient facts to provide an answer, the Commission shall request additional written information from the requestor not later than ten calendar days after the request for advisory opinion was received by the Commission.

(2) If no additional information is supplied [~~in response~~] to the Commission within ten calendar days of the date of the Commission's request and [~~request for additional written information from the requestor, after~~] the Commission determines that the request does not contain sufficient facts to provide an answer, then no opinion can be issued and the advisory opinion request file will be closed. In this instance, the requestor will be given a statement that no opinion can be expressed with regard to a given fact situation due to the failure to supply additional information.

(3) The response to a Commission request for additional information shall be addressed to Advisory Opinion, The Charitable Bingo Operations Division, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630 or by e-mail to [Advisory.Opinion@lottery.state.tx.us](mailto:Advisory.Opinion@lottery.state.tx.us) in order to permit the Commission to provide a response to the request.

(d) Subject of an Advisory Opinion

(1) The Commission may refuse to issue an advisory opinion on a matter that the Commission knows to be in active litigation including a contested administrative case.

[(1)] The Commission will not issue an advisory opinion that concerns the subject matter of pending litigation or contested case notice of hearing known to the Commission other than to provide a

response which refers to the applicable statutes and rules cited in the pending litigation or contested case proceeding notification.]

(2) An advisory opinion cannot resolve a disputed question of fact other than to provide a response which refers to the applicable statutes and rules.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2009.

TRD-200904506

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 344-5012



## 16 TAC §402.102

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.102 (Bingo Advisory Committee). The purpose of the proposed amendments is to make the rule consistent with changes to the Bingo Enabling Act, Texas Occupations Code §2001.108, resulting from recent legislation H.B. No. 1474 effective October 1, 2009, to provide information on grounds for inquiry and possible removal of a person from the Bingo Advisory Committee (BAC), to provide more flexibility in the scheduling of BAC meetings, and to change the due date for the annual BAC workplan and report of activities to the Commission.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is rule language that is consistent with the statute and additional guidance on Commission expectations for the BAC.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Tuesday, November 3, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas

Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

§402.102. *Bingo Advisory Committee.*

(a) (No change.)

(b) What is the composition of the Bingo Advisory Committee?

(1) The Commission may appoint nine persons as members of the BAC.

(2) The Commission must appoint members to represent the following interest groups:

(A) the public,

(B) conductors that are not licensed commercial lessors,

(C) conductors that are licensed commercial lessors,

and

(D) commercial lessors. ~~and~~

~~{(E) system service providers.}~~

(3) The Commission may appoint members to represent:

(A) licensed manufacturers, and

(B) licensed distributors.

(4) If there is not an individual to represent one of the required interest groups, the Commission may appoint a member from the remaining interest groups.

(c) - (f) (No change.)

(g) May a BAC member be removed from the BAC before the member's term has expired?

(1) The Commission may remove a member at any time without cause. ~~[for failure to meet the eligibility requirements described in subsection (e)-]~~

(2) The Commission may consider any of the following, among other things, to be grounds for inquiry and possible removal of a person from the BAC: ~~[remove a member for failure to attend two consecutive, regular scheduled meetings for any reason:-]~~

(A) failure to meet the eligibility requirements described in subsection (c) of this section;

(B) failure to attend two consecutive, regular scheduled meetings for any reason;

(C) unlawful conduct;

(D) making of false statements, including omissions;

(E) acts involving dishonesty, fraud, deceit or misrepresentation;

(F) abuse of legal process;

(G) violation of an order of a court;

(H) conduct evidencing mental or emotional instability;

or

(I) conduct evidencing drug or alcohol abuse or dependency.



(3) Failure to disclose a publicly filed allegation of any of the items in paragraph (2) of this subsection is grounds for removal.

(h) When and where does the BAC meet?

(1) The BAC may ~~must~~ meet quarterly or ~~but may meet~~ more frequently at the Commission's request.

(2) ~~Quarterly~~ BAC meetings must be held at the Commission headquarters in Austin, Texas, except one ~~quarterly~~ meeting per year may be held at a location in Texas other than Austin, subject to the discretion of the Charitable Bingo Operations Division Director.

(i) - (l) (No change.)

(m) What is the BAC's annual workplan?

(1) The BAC must submit to the Commission for approval at the first meeting prior to ~~after~~ September 1 each year a workplan to guide the activities of the BAC for the following year.

(2) The workplan will contain those items that the BAC and the Commission determine are relevant to the state of the bingo industry.

(n) What are the BAC's reporting requirements?

(1) The BAC must report their activities quarterly to the Commission, although the Commission may require reporting more frequently.

(2) The BAC will report annually to the Commission the BAC's perspective on the state of the charitable bingo industry in Texas with specific comments on the following:

- (A) gross receipts;
- (B) net receipts;
- (C) charitable distributions;
- (D) expenses;
- (E) attendance; and
- (F) any other matter requested by the Commission.

(3) At the first Commission meeting held prior to ~~after~~ September 1 each year, the BAC will provide to the Commission a report of its activities as they relate to the workplan approved by the Commission the previous year.

(o) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2009.

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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 344-5012



## 16 TAC §402.103

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.103 (Training Program). The purpose of the proposed amendments is to make the rule consistent with changes to the Bingo Enabling Act resulting from recent legis-

lation H.B. No. 1474 effective October 1, 2009 and to provide additional information about training.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is language in the rule that is consistent with the Bingo Enabling Act and provides useful information on the training program.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Tuesday, November 3, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

### §402.103. Training Program.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings.

(1) On-line training course ~~[class]~~--A training course ~~[class]~~ developed by the Commission that is accessible on the Commission's website and may be taken at any time.

(2) On-site training course ~~[class]~~--A training course ~~[class]~~ conducted by a Commission employee held at a specified date, time, and location.

(3) Primary training course--Comprehensive initial training required for all individuals who have never held a valid certificate of completion.

(4) Continuing education course--Refresher training for individuals who have held a valid certificate of completion.

(5) Certificate of completion--Documentation issued by the Commission certifying an individual's completion of the training program that is valid for two years.

(b) Training format. ~~[classes.]~~ The training program is offered in two formats--on-site and on-line. Individuals may choose an on-site or on-line training course. ~~[class.]~~

(c) Required training.

(1) At all times the bingo chairperson and a designated agent of a unit must have a valid certificate of completion for the training program unless the organization is a member of a unit that designates a unit manager under §2001.437 of the Bingo Enabling Act. A designated unit manager must have a valid certificate of completion for the training program.

(2) All individuals listed in paragraph (1) of this subsection who have not previously been issued a certificate of completion are required to take the primary training course.

(3) Subsequent training requirements may be met by taking either a primary or continuing education training course.

(4) As part of the terms of a Commission order, the Commission may direct one or more members of a licensed authorized organization to complete the primary or continuing education training course within a specified timeframe, regardless of whether or not the individual(s) has a valid certificate of completion.

(d) Optional training. Other individuals including operators, officers, directors, or members of a licensed authorized organization may take a training course.

(e) Content of the primary training course. The primary training course covers, at a minimum, the following areas:

(1) Overview the Bingo Enabling Act and Charitable Bingo Administrative Rules;

(2) Conducting a bingo game;

(3) Record keeping requirements;

(4) Administration and operation of charitable bingo;

(5) Promotion of a bingo game;

(6) Bingo Advisory Committee; and

(7) General information about the license application process.

(f) [(e)] On-site training course. [class:]

(1) Notice of the specified date, time and location of scheduled on-site training courses [classes] will be posted on the Commission's website and published in the Bingo Bulletin.

(2) A person attending an on-site training course [class] should pre-register by:

(A) completing an electronic submission form prescribed by the Commission located on the Commission's website; or

(B) telephoning the Commission's headquarters location and providing the information requested on the [electronic submission] form prescribed by the Commission.

(3) Each individual attending a [the] training course [program] must confirm attendance [complete a confirmation of attendance] on a form prescribed by the Commission.

(4) A person must attend a complete course to receive a certificate of completion.

(5) The Commission instructor has discretionary authority to determine whether a person has attended a complete course in order to receive the certificate of completion.

(6) [(4)] All reasonable and necessary expenses or costs of attendance by any member of the licensed authorized organization may be paid from the licensed authorized organization's bingo bank account. Expenses and costs are limited to travel, lodging, meals, and materials.

(7) [(5)] In the event the Charitable Bingo Operations Division cancels the on-site training, reasonable effort will be made to notify persons who have pre-registered.

(8) A licensed authorized organization may request that the Commission hold an on-site training course at a specified time and location, in addition to those scheduled and posted on the Commission's website. If approved, the organization must reimburse the Commission within 30 days of billing for all travel expenses incurred by Commission employees in association with teaching the course. Attendance at a requested course shall be open to anyone based on seating and facility accommodation limits. The Commission's approval of a requested course is based on the availability of Commission resources.

(g) On-line training course. Persons taking the on-line training course must:

(1) complete the training modules as specified on the Commission's website; and

(2) obtain a certificate of completion through the automated program on the website.

[(d) On-line training class:]

[(1) Persons taking the on-line training class must:]

[(A) complete all training modules specified on the Commission's website; and]

[(B) complete a test answer sheet and receive a passing score of at least 70%:]

[(2) Persons not receiving a passing score on the test answer sheet may re-take the training class:]

[(e) The Charitable Bingo Operations Division will issue a Certificate of Completion that is valid for two years to persons who attend the entire on-site training class or satisfactorily complete the on-line training:]

[(f) Training Required:]

[(1) At all times, the bingo chairperson and each operator designated by a licensed authorized organization holding a regular license to conduct bingo must have a valid Certificate of Completion for the training program:]

[(2) The bingo chairperson and at least one other person designated as an operator under Occupations Code, §2001.102(b)(10) must have a valid Certificate of Completion prior to the date a regular license is issued or a license amendment to change the primary operator is approved:]

[(3) Organizations must meet the requirements of paragraphs (1) and (2) of this subsection within 60 days of the effective date of this section:]

[(4) Other officers, directors or members from a licensed authorized organization may attend training:]

[(5) The Charitable Bingo Operations Division may limit the number of persons attending an on-site class for a licensed authorized organization in order to ensure persons from other licensed authorized organizations have the opportunity to attend training:]

[(g) Content of the training. The training program will cover, at a minimum, the following areas:]

[(1) General information about the Bingo Enabling Act and Charitable Bingo Administrative Rules:]

[(2) Conducting a bingo game:]

- ~~[(3) Record keeping requirements;]~~
- ~~[(4) Administration and operation of charitable bingo;]~~
- ~~[(5) Promotion of a bingo game;]~~
- ~~[(6) Bingo Advisory Committee; and]~~
- ~~[(7) General information about the license application process;]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2009.

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Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 344-5012



## SUBCHAPTER D. LICENSING REQUIREMENTS

### 16 TAC §402.405

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.405 (Temporary Authorization). The purpose of the proposed amendments is to clarify the specific items that must be in compliance with the Bingo Enabling Act and Charitable Bingo Administrative Rules for each license type before a temporary authorization will be issued. In addition, the proposed amendments specify when an application is considered denied for the purposes of §2001.304(a) of the Bingo Enabling Act, allow for a temporary authorization to be issued in conjunction with a license with a two-year license period, and clarify that an organization that has been issued an eligibility determination is not authorized for a temporary authorization.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is to clarify the process and specific requirements that must be met before a license applicant may be issued a temporary authorization to conduct a bingo activity.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will

hold a public hearing on this proposal at 10:00 a.m. on Tuesday, November 3, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

#### *§402.405. Temporary Authorization.*

(a) A temporary authorization shall be issued only to a person who is not licensed by the Commission but who has filed a complete [an original] application for an original license to conduct a charitable bingo activity.

(b) Upon the applicant's request, the Commission will issue a temporary authorization for the activity requested on the license application by the 31st calendar day after the Commission's receipt of an application that is complete in accordance with §402.400(a) of this chapter if the following are in compliance with the Act and Rules.

(1) For all licenses: eligibility of all persons listed on the application requiring criminal background investigations.

(2) For a commercial lessor license: eligibility of applicant as provided by Texas Occupations Code, §2001.152.

(3) If an applicant asserts in writing that its application is complete, the Commission will grant or deny the application, or make a determination on temporary authorization.

(c) ~~[(b)]~~ A temporary authorization to conduct a bingo-related activity may only be issued to a person who will conduct a bingo-related activity at the same location for which the person has a pending original application to conduct a bingo-related activity. ~~[A temporary authorization shall not be issued to a person if the proposed location to conduct bingo is not authorized under the provisions of the Bingo Enabling Act.]~~

(d) ~~[(c)]~~ A temporary authorization shall be issued for a stated period of time not to exceed 60 days. A temporary authorization may be extended upon written request by the person to whom the temporary authorization was issued. Such request must be filed with the Commission at least seven working days prior to the time the temporary authorization expires. Extensions shall be for a period of time not to exceed 60 days. No more than two extensions may be issued.

(e) ~~[(d)]~~ A request for an extension shall include:

- (1) the complete name of the organization requesting the extension;
- (2) the Texas taxpayer identification number of the organization requesting the extension;
- (3) a complete explanation of the basis for the request; and
- (4) the specific reason(s) supporting the need for an extension.

(f) ~~[(e)]~~ An organization that [who] is not in compliance with the Bingo Enabling Act and[/or] the Charitable Bingo Administrative Rules will not be granted an extension unless the organization becomes compliant during the period of the original temporary authorization.

(g) ~~[(f)]~~ An organization conducting bingo under a temporary authorization that desires to obtain a temporary license shall be subject to the same requirements in §402.403(c)(1) of this chapter regarding an organization not holding a regular ~~[an annual]~~ license to conduct bingo.

(h) ~~[(g)]~~ A temporary authorization is not a license.

(i) ~~[(h)]~~ A temporary authorization may not be amended.

(j) ~~[(i)]~~ A regular ~~[An annual]~~ license that has been issued to an applicant shall expire one year or two years from the date of the first issuance of any temporary authorization under this section.

(k) An organization that has been issued an eligibility determination in accordance with §402.400(o) of this chapter is not eligible for a temporary authorization.

(l) For the purposes of Texas Occupations Code, §2001.304(a), an application for an activity is considered issued or denied on the date the Commission issues a license or notice of denial to the applicant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2009.

TRD-200904502

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 344-5012



## 16 TAC §402.409

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.409 (Amendment for Change of Premises or Occasions Due to Lease Termination or Abandonment). The purpose of the proposed amendments is to make the rule consistent with changes to the Bingo Enabling Act, Texas Occupations Code §2001.108, resulting from recent legislation H.B. No. 1474 effective October 1, 2009.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is availability of accurate information on the Commission's time frame for acting on a joint application filed under 16 TAC §402.409.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630,

Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Tuesday, November 3, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

*§402.409. Amendment for Change of Premises or Occasions Due to Lease Termination or Abandonment.*

(a) - (d) (No change.)

(e) The Commission will act on a joint application filed under this section:

(1) no later than fourteen ~~[ten]~~ calendar days after the date an application relating to abandonment is filed with the Commission; or

(2) no later than fourteen ~~[ten]~~ calendar days after the date an application relating to lease termination has been filed with the Commission or the effective date of the licensed authorized organization's lease termination, whichever is later.

(f) - (h) (No change.)

(i) The denial of an application under this section does not affect a licensed authorized organization's existing regular ~~[annual]~~ license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2009.

TRD-200904505

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 344-5012



## 16 TAC §402.411

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.411 (Late License Renewal). The purpose of the proposed new rule is to facilitate implementation of new §2001.315 of the Bingo Enabling Act resulting from recent legislation H.B. No. 1474 effective October 1, 2009.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an

economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated is availability of information on licensee compliance with §2001.315 of the Bingo Enabling Act.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Tuesday, November 3, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

§402.411. Late License Renewal.

(a) A regular bingo license expires one calendar year or two calendar years from the first date of the license period.

(b) A licensee is solely responsible for the timely filing of an application for renewal of its regular license.

(c) Failure of the licensee to receive the renewal notice(s) mailed by the Commission is not a mitigating circumstance for untimely filing of a renewal application.

(d) To be timely filed:

(1) the renewal application and payment of the estimated license fee must be received by the Commission no later than the license expiration date; or

(2) the renewal application's envelope postmarked date must clearly show a date that is no later than the license expiration date, unless the expiration date is a Saturday, Sunday, or legal holiday, in which event the application is due the next day which is not a Saturday, Sunday, or legal holiday; or

(3) an application bearing no legible postmark, postal meter date, or date of delivery to the common carrier shall be considered to have been sent seven calendar days before receipt by the Agency, or on the date of the document if the document date is less than seven days earlier than the date of receipt.

(e) The late license renewal fee is based on the estimated license fee for the renewal period. Penalty amounts are calculated as follows:

Figure: 16 TAC §402.411(e)

(f) The late license renewal fee is due within 14 calendar days of the date of the written notification by the Commission of the amount due.

(g) The Commission will not issue a temporary license to a licensed authorized organization that files its renewal application late until the Commission receives the late license renewal fee.

(h) The Commission will not issue an amended license to a licensed authorized organization or licensed commercial lessor that files its renewal application late until the Commission receives the late license renewal fee.

(i) License renewal applications received more than 60 days after the license expiration date will be returned unprocessed by the Commission to the sender.

(j) A late license renewal fee is not refundable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2009.

TRD-200904509

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 344-5012



**16 TAC §402.422**

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.422 (Amendment to a Regular License to Conduct Charitable Bingo). The purpose of the proposed amendments is to make the rule consistent with changes to the Bingo Enabling Act, Texas Occupations Code §2001.307(c) resulting from recent legislation H.B. No. 1474 effective October 1, 2009.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is language in the rule that is consistent with the Bingo Enabling Act.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. Tuesday, November 3, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission

to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

§402.422. *Amendment to a Regular License to Conduct Charitable Bingo.*

(a) - (b) (No change.)

(c) Playing location.

(1) An organization amending its playing location must re-~~turn:~~ ~~[submit:]~~

(A) its current bingo license if available, or a certified statement signed by the bingo chairperson indicating that the license is not available, unless the license is currently in administrative hold status or its renewal application is pending; and

(B) a copy of the meeting minutes recording that the organization voted to move the bingo playing location and indicating the exact playing location address and name of the location, if applicable.

(2) A licensee shall display a copy of its license at the current playing location if the license was surrendered upon application for an amendment.

(d) (No change.)

(e) Primary business office location.

(1) An organization may not relocate its primary business office to a different county solely for the purpose of relocating its bingo playing location. If the new location is not adjacent to the current county of its primary business office, the organization must have at least 20 percent of its members' residences located in the county to which the organization is moving.

(2) An organization changing its primary business office location must submit a copy of the following:

(A) meeting minutes recording that the licensed authorized organization voted to move its primary business office to the proposed location and the reason for the move;

(B) if moving to a non-adjacent county, the licensed authorized organization's membership list showing names and county of residence with at least 20 percent of the members' residences located in the non-adjacent county to which the organization is moving; and

(C) letter approving the organization's primary business office relocation to another county from the parent organization, if applicable.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2009.

TRD-200904504

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 344-5012

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## SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

### 16 TAC §402.702

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Lottery Commission (Commission) proposes the repeal of 16 TAC §402.702 (Location Verification Inspection). The Commission is proposing the repeal of the rule because the requirements contained in the rule are also contained in the Bingo Enabling Act, and the rule is not necessary.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed repeal of the existing rule will be in effect, the public benefit anticipated is the elimination of a rule that is no longer needed.

The Commission requests comments on the proposed repeal from any interested person. Comments on the proposed repeal may be submitted to Sandra Joseph, Assistant General Counsel, by mail at P.O. Box 16630, Austin, Texas 78761; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). The Commission will hold a public hearing on this proposal at 10:00 a.m. on Tuesday, November 3, 2009, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed repeal in order to be considered.

The repeal is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The repeal implements the Texas Occupations Code, Chapter 2001.

§402.702. *Location Verification Inspection.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2009.

TRD-200904503

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 344-5012

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## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

##### SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND ASSESSMENT OF EXISTING DEGREE PROGRAMS

###### 19 TAC §5.44

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §5.44 related to Approval of New Academic Programs and Administrative Changes at Public Universities and/or Health-Related Institutions. Specifically, this amendment will specify that an institution may not receive approval for a new bachelor's or master's program that the institution previously offered which was closed during the last ten years due to low productivity.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to ensure that institutions allocate resources into programs that regularly produce graduates. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or [macgregor.stephenson@thecb.state.tx.us](mailto:macgregor.stephenson@thecb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, Chapter 61 which gives the Coordinating Board the authority to regulate the awarding or offering of degrees, credit towards degrees, and the use of certain terms.

The proposed amendment affects Texas Education Code, Chapter 61, Subchapter C, §61.051(e).

###### §5.44. *Presentation of Requests and Steps for Implementation.*

(a) Requests for new degree programs shall be made in accordance with the following procedures.

(1) Approval of new bachelor's and master's programs is automatic if all of the following conditions are met:

(A) - (E) (No change.)

(F) The program is not one which the institution previously offered and has been closed due to low productivity in the last ten years.

(G) [(F)] The program would be offered by a university or health-related institution.

(H) [(G)] No objections to the proposed program are received by the Coordinating Board during the 30-day comment period.

(2) - (4) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 12, 2009.

TRD-200904581

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 28, 2010

For further information, please call: (512) 427-6114

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## TITLE 28. INSURANCE

### PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

#### CHAPTER 276. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

###### 28 TAC §276.4

The Office of Injured Employee Counsel (OIEC) proposes new §276.4 concerning OIEC's Sick Leave Pool Program. Texas Government Code §661.002(c) requires state agencies to adopt rules relating to the agency's sick leave pool program. OIEC sought guidance on this rulemaking initiative from the Office of the Attorney General. A letter was received from the Office of the Attorney General dated July 15, 2009, recommending OIEC needed to pursue this initiative.

Proposed new §276.4 is needed to alleviate hardship caused to an employee and an employee's immediate family if a catastrophic injury or illness forces an employee to exhaust all sick leave and to lose compensation from the state. This section is also needed to designate a pool administrator and to establish policy, operating procedures, and forms for the administration of the sick leave pool program.

Mr. Brian White, Deputy Counsel, has determined that for each year of the first five years the proposed section shall be in effect, there shall be no fiscal impact to state and local governments as a result of the enforcement or administration of this rule. There shall be no measurable effect on local employment or the local economy as a result of the proposal. This section is being proposed as required by Texas Government Code §§661.002 - 661.082. This rule will be for internal use of OIEC staff only.

As required by Texas Government Code §2006.002(c), OIEC has determined that the proposal will not have an adverse economic effect on small or micro-business. This section is being proposed as required by Texas Government Code §§661.002 - 661.082. This rule will be for internal use of OIEC staff only.

OIEC has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225 and therefore a regulatory flexibility analysis is not required.

OIEC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 22, 2009, to Brian White, Deputy Public Counsel, Office of Injured Employee Counsel, Mail Code 50, 7551 Metro Center Drive, Austin, Texas 78744. A request for a public hearing should be submitted separately to the Deputy Public Counsel.

Section 276.4 is proposed pursuant to Texas Government Code §§661.001 - 661.008 and Texas Labor Code §404.106. Texas Government Code §661.001 provides for definitions for Subchapter A. Section 661.002 provides for the establishment and administration of the sick leave pool. Section 661.003 provides guidelines for contribution to the sick leave pool. Section 661.004 provides guidance on the use of time in the pool. Section 661.005 provides guidelines for withdrawal of time from the pool. Section 661.006 provides for the limitation of withdrawal from the sick leave pool. Section 661.007 provides for equal treatment of leave used from the sick leave pool. Section 661.008 provides the estate of the deceased is not entitled to payment of unused time withdrawn by the deceased employee. Texas Labor Code §404.106 provides the Public Counsel rulemaking authority to adopt rules.

The following sections are affected by this proposal: 28 TAC §276.4 - Texas Government Code §§661.002 - 661.082 and Texas Labor Code §404.006.

§276.4. Sick Leave Pool.

A sick leave pool is established to alleviate hardship caused to an employee and employee's immediate family if a catastrophic illness or injury forces the employee to exhaust all sick leave earned by the employee and to lose compensation from the state.

(1) The Deputy Public Counsel is designated as the pool administrator.

(2) The pool administrator shall develop and administer a procedure for the administration of this section.

(3) Operation of the pool shall be consistent with Chapter 661 of the Texas Government Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2009.  
TRD-200904511

Brian M. White  
Deputy Public Counsel  
Office of Injured Employee Counsel  
Earliest possible date of adoption: November 22, 2009  
For further information, please call: (512) 804-4182

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**TITLE 30. ENVIRONMENTAL QUALITY**

**PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES**

**SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS**

**DIVISION 3. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM**

**FOR ON-ROAD AND NON-ROAD VEHICLES**

**30 TAC §114.620, §114.622**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §114.620 and §114.622.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE RULES**

The 77th Texas Legislature, 2001, enacted Senate Bill 5 establishing the Texas Emissions Reduction Plan (TERP), which provides financial incentives for reducing emissions of on-road and non-road motor vehicles and equipment. House Bill (HB) 1796, 81st Texas Legislature, 2009, amended the Texas Health and Safety Code, Chapter 386, TERP Program to add a definition for stationary engine and to clarify requirements for projects involving non-road equipment used for natural gas recovery purposes.

**SECTION BY SECTION DISCUSSION**

*§114.620, Definitions*

Section 114.620 is amended to add a definition for stationary engine as required by Texas Health and Safety Code, §386.001. Texas Health and Safety Code, §386.001 was amended by adding Texas Health and Safety Code, §386.001 (10-a), which states: stationary engine means a machine used in non-mobile applications that converts fuel into mechanical motion, including turbines and other internal combustion devices.

*§114.622, Incentive Program Requirements*

Section 114.622 is amended to clarify requirements for projects related to non-road equipment used for natural gas recovery purposes, as required by Texas Health and Safety Code, §386.104(c).

**FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT**

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency, but not for other units of state or local government as a result of administration or enforcement of the proposed rules.



The agency will utilize available funding appropriated out of the TERP Account 5071 to implement the proposed rules.

The proposed rules amend Chapter 114 to implement certain provisions of HB 1796. The proposed rules add the definition of stationary engine as provided by HB 1796. This change will authorize the agency to fund projects involving stationary gas turbine engines under the TERP program. The proposed rules also provide that for projects involving non-road equipment used for natural gas recovery purposes, the equipment must be operated in a nonattainment area or affected county for a sufficient amount of use in order to meet the statutory cost effectiveness requirements. This provision would exempt this equipment from the requirement that the equipment operate at least 75% of the annual use in the nonattainment areas and affected counties for at least five years.

The TERP incentive grant program is applicable to 41 eligible counties in the state. The addition of eligible projects involving stationary gas turbine engines will require the agency to consider and fund a wider variety of projects using appropriated funds from the TERP Account 5071. The addition of eligible projects will affect the overall allocation of grant funding in the TERP program and may reduce the amount of grant money available for some governmental entities. However, the new projects are expected to reduce nitrogen oxide (NO<sub>x</sub>), thus forwarding the TERP goal of reducing NO<sub>x</sub> emissions.

It is anticipated that the addition of eligible projects involving stationary engines will mostly affect gas turbine engines on gas pipeline compressors. At this time it is not known if any units of state or local government own or operate these types of stationary engines. Owners or operators of affected gas turbine engines may be eligible to apply for grant funding if those engines meet grant requirements. The amount of grant funds will vary widely depending on the operating conditions of each grant applicant. TERP reimbursement for engine replacement or retrofit cost is estimated to range from \$30,000 to more than \$150,000 depending upon the amount of emission reductions achieved.

#### PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit from the changes seen in the proposed rules will be improvement in air quality in the 41 counties eligible to receive TERP incentive grant funding.

The proposed rules are anticipated to affect stationary engines in the 41 TERP eligible counties. Owners or operators of affected gas turbine engines may be eligible to apply for grant funding if those engines meet grant requirements. It is anticipated that this change will mostly affect stationary gas turbine engines on gas pipeline compressors. At this time, staff is not able to determine how many businesses or individuals own stationary engines and therefore may be eligible for TERP grant funding. Those that are eligible for funding may apply for funds to replace or retrofit the equipment if that equipment is determined to be eligible for a diesel emission incentive grant. The amount of the grant funds will vary widely depending on the operating conditions of each grant applicant. TERP reimbursement for engine replacement or retrofit cost is estimated to range from \$30,000 to more than \$150,000 depending upon the amount of emission reductions achieved.

No significant fiscal implications are anticipated for businesses with natural gas recovery interests due to the proposed change, which will allow the commission to set the minimum project life

requirements for non-road equipment used for natural gas recovery purposes.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules are expected to affect owners or operators of stationary engines in the 41 TERP eligible counties. It is further anticipated that this change will mostly affect stationary gas turbine engines on gas pipeline compressors. Any small or micro-businesses that own or operate stationary engines on gas pipeline compressors may be eligible to apply for grant funding if those engines meet grant requirements.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required by state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The amended Chapter 114 rules are proposed in accordance with HB 1796, which amended Texas Health and Safety Code, Chapter 386. The proposed rules add a new definition for stationary engine and clarify requirements for projects involving non-road equipment used for natural gas recovery purposes. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, none of these amendments place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an

agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state or federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with HB 1796. The rules make revisions to a voluntary program and only affect motor vehicles and equipment that are not considered to be private real property. Therefore, promulgation and enforcement of the proposed rules is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it revises a voluntary incentive grant program and does not govern air pollution emissions. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on November 16, 2009 at 10:00 a.m. in Building E, Room 201 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Devon Ryan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-048-114-EN. The comment period closes on November 23, 2009. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Steve Dayton, Air Quality Division, (512) 239-6824 or [sdayton@tceq.state.tx.us](mailto:sdayton@tceq.state.tx.us).

#### STATUTORY AUTHORITY

These amendments are proposed under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and Texas Water Code, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments are also proposed under Texas Health and Safety Code, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Health and Safety Code; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and Texas Health and Safety Code, Chapter 386, which establishes the Texas Emissions Reduction Plan. Finally, these amendments are proposed as part of the implementation of House Bill 1796.

The proposed amendments implement Texas Health and Safety Code, Chapter 386.

#### §114.620. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cost-effectiveness--The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure. In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(2) Guidelines--*Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) adopted by the commission under Texas Health and Safety Code, §386.053, as amended.

(3) Incremental cost--The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business and may include added lease or fuel costs as well as additional capital costs.

(4) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(5) Non-road diesel--A vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including: non-road non-recreational equipment and vehicles; construction equipment; locomotives; marine vessels; and other high-emitting diesel engine categories.

(6) Non-road engine--An internal combustion engine that is in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of equipment that is intended to be propelled while performing its function, or a piece of equipment designed to be and capable of being carried or moved from one location to another.

(7) On-road diesel--An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more.

(8) Qualifying fuel--Any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(9) Repower--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(10) Retrofit--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

(11) Small business--A business owned by a person who:

(A) owns and operates not more than two vehicles, one of which is:

(i) an on-road diesel with a pre-1994 engine model; or

(ii) a non-road diesel with an engine with uncontrolled emissions; and

(B) has owned the on-road or non-road diesel for more than one year.

(12) Stationary engine--A machine used in non-mobile applications that converts fuel into mechanical motion, including turbines and other internal combustion devices.

#### *§114.622. Incentive Program Requirements.*

(a) Eligible projects include:

- (1) purchase or lease of on-road and non-road diesels;
- (2) emissions-reducing retrofit projects for on-road or non-road diesels;
- (3) emissions-reducing repower projects for on-road or non-road diesels;
- (4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;
- (5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO<sub>x</sub>) emissions;
- (6) use of qualifying fuel;

(7) implementation of infrastructure projects;

(8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and

(9) other projects that have the potential to reduce anticipated NO<sub>x</sub> emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine or a project involving non-road equipment used for natural gas recovery purposes, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.

(c) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled or scrapped provided, however, that the executive director may allow permanent removal from the State of Texas in specific grants where the applicant has provided sufficient assurances that the old locomotive will not be returned to the State of Texas.

(d) To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a) of this section, except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, must not exceed a cost-effectiveness of \$15,000 per ton of NO<sub>x</sub> emissions reduced. The commission may set lower cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO<sub>x</sub> emissions in relation to the funds to be awarded.

(e) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(f) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(g) A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO<sub>x</sub> emissions to the level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) for that type of project compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(h) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

(i) Criteria established in the guidelines, including revisions to the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388), apply to the Texas Emissions Reduction Plan program. Notwithstanding the provisions of this chapter, as authorized under Texas Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2009.

TRD-200904573

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 239-6090



## DIVISION 5. TEXAS CLEAN FLEET PROGRAM

### 30 TAC §§114.650 - 114.658

The Texas Commission on Environmental Quality (commission or agency) proposes new §§114.650 - 114.658.

The new sections are proposed to be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill 1759, 81st Legislature, 2009 amended the Texas Health and Safety Code by adding Chapter 391, Texas Clean Fleet Program. This program is designed to encourage eligible fleets to replace diesel vehicles with alternative fuel or hybrid vehicles. Eligible entities that replace 25 or more on-road diesel vehicles with alternative fuel or hybrid vehicles may apply for a grant under the program to offset the cost of replacing those vehicles.

#### SECTION BY SECTION DISCUSSION

##### §114.650, *Definitions*

Section 114.650 establishes the definitions specific to the Texas Clean Fleet Program, as required by Texas Health and Safety Code, §391.001.

##### §114.651, *Applicability*

Section 114.651 establishes the applicability requirements as required by Texas Health and Safety Code, §391.002. These requirements outline entities that are eligible to apply for a grant under the program.

##### §114.652, *Qualifying Vehicles*

As required by Texas Health and Safety Code, §391.003, this section clarifies the types of vehicles that are and are not eligible for participation in the program.

##### §114.653, *Grant Eligibility*

Section 114.653 establishes grant eligibility requirements, as required by Texas Health and Safety Code, §391.005. These requirements establish use and ownership criteria of any vehicles being replaced, as well as the level of emissions that must be achieved in order to receive a grant under the program. Subsection (d) provides that the executive director may establish additional criteria for purposes of prioritizing projects for selection, which may include, but are not limited to: nonattainment status of the primary location in which the eligible vehicles are used; or cost per ton benefits of the overall emissions being reduced. The commission is considering the establishment of prioritizing criteria that would limit the commission to initially considering only grant projects that include vehicles with a primary location in a county that is located within an eight-hour ozone nonattainment area or a near nonattainment area that has submitted an early action compact plan. The commission seeks public comment on proposed rules regarding the grant eligibility requirements and whether to prioritize grant projects to the initial consideration of only grant projects in counties within nonattainment or near nonattainment areas.

##### §114.654, *Usage and Disposition*

As required by Texas Health and Safety Code, §391.005, this section outlines requirements regarding the use of new vehicles purchased through the program, as well as the disposal of vehicles being replaced.

##### §114.655, *Grant Restrictions*

As required by Texas Health and Safety Code, §391.006, this section outlines the allowable use of grant funds awarded under the program.

##### §114.656, *Eligible Grant Amounts*

As required by Texas Health and Safety Code, §391.007, this section outlines the various eligible grant amounts allowed under the program based on the age and type of each vehicle being replaced.

##### §114.657, *Reporting Requirements*

Section 114.657 identifies the reporting requirements, as required by Texas Health and Safety Code, §391.005.

##### §114.658, *Implementation Schedule*

Section 114.658 identifies the expiration date of the program, as stated in Texas Health and Safety Code, §391.008.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will utilize available funding appropriated out of the Texas Emissions Reduction Plan (TERP) Account 5071 to implement the proposed rules. Other state agencies and local governments may experience cost savings as a result of the proposed rules if they are eligible to use the Texas Clean Fleet Program grant funds to replace diesel powered vehicles in their fleets with alternative fuel vehicles.

Senate Bill 1759 requires the agency to create the Texas Clean Fleet Program using a portion of the funds appropriated in TERP Account 5071. The proposed rules would add a new division to

30 TAC Chapter 114 to outline the definitions and requirements for participation in the Texas Clean Fleet Program, which is voluntary. The Texas Clean Fleet Program would be a new type of incentive grant in the overall TERP incentive grant program, and five percent of funding for the diesel emissions reduction incentive program would be allocated to the Texas Clean Fleet Program. To be eligible for grant funding, an entity would be required to have a fleet of at least 100 vehicles, 25 of which are diesel powered and meet other grant criteria for replacement. Grant amounts range from 80% of the cost for replacement of a heavy-duty vehicle to 60% of the cost for replacement of a light-duty diesel vehicle. The agency has been appropriated approximately \$6.8 million in fiscal year 2010 and \$5.2 million in fiscal year 2011 for the Texas Clean Fleet Program. The cost for alternative fuel vehicles is estimated to range from \$20,000 to \$150,000.

State agencies or local governments with fleets and vehicles that meet the criteria for the Texas Clean Fleet Program grant may experience cost benefits if they qualify to receive grant funds to purchase alternative fuel vehicles to replace diesel vehicles. Applying for a grant from the Texas Clean Fleet Program would be voluntary, and it is not known at this time how many state agencies or local governments would do so.

#### PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality statewide since there will be additional opportunities to apply for grant funds to replace diesel vehicles with alternative fuel options that have fewer emissions.

Businesses with fleets and vehicles that meet the criteria for the Texas Clean Fleet Program grant may experience cost benefits if they qualify to receive grant funds to purchase alternative fuel vehicles to replace diesel vehicles. Applying for a grant from the Texas Clean Fleet Program would be voluntary and it is not known at this time how many businesses would do so. Grant amounts range from 80% of the cost for replacement of a heavy-duty diesel vehicle to 60% of the cost for replacement of a light-duty diesel vehicle. The agency has been appropriated approximately \$6.8 million in fiscal year 2010 and \$5.2 million in fiscal year 2011 for the Texas Clean Fleet Program. The cost for alternative fuel vehicles is estimated to range from \$20,000 to \$150,000.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. It is not expected that most small businesses will meet the criteria to qualify for the Texas Clean Fleet Program. However, if a small business does qualify for a Texas Clean Fleet Program grant, it would experience the same cost benefits as a large business under the proposed rules.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required, because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required, because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that this rule action is not subject to §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The new Chapter 114 rules are proposed in accordance with Senate Bill 1759, which added Texas Health and Safety Code, Chapter 391. The proposed rules add a new voluntary incentive program with the goal of reducing diesel emissions. The program offers financial incentives for the voluntary replacement of diesel engines. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, none of the proposed rules place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with Senate Bill 1759. The new rules implement a voluntary program and

only affect motor vehicles, which are not considered to be private real property. Therefore, promulgation and enforcement of the proposed rules is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning Actions and Rules Subject to the Coastal Management Program (CMP), and will, therefore, require that the goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined that the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it adds a voluntary incentive grant program and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on November 16, 2009 at 2:00 p.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-047-114-EN. The comment period closes on November 23, 2009. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adapt.html](http://www.tceq.state.tx.us/nav/rules/propose_adapt.html). For further information, please contact Stephen Dayton, Implementation Grants Section, (512) 239-6824.

#### STATUTORY AUTHORITY

These new rules are proposed under Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties under the Texas Water Code; Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and Texas Water Code, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new rules are also proposed under Texas Health and

Safety Code, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; Texas Health and Safety Code, Texas Clean Air Act §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and Texas Health and Safety Code, Texas Clean Air Act, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, the proposed new rules are specifically authorized by Senate Bill 1759.

The proposed new rules implement Texas Health and Safety Code, Chapter 391.

#### §114.650. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Alternative fuel--A fuel, other than gasoline or diesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85% methanol by volume.

(2) Eligible entity--Any person or entity with a fleet of 100 or more vehicles that:

(A) are registered in Texas; and

(B) include at least 25 vehicles that are eligible for replacement.

(3) Golf cart--A motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

(4) Heavy-duty vehicle--A motor vehicle with a gross vehicle weight rating greater than 8,500 pounds and containing an engine certified to the United States Environmental Protection Agency's heavy-duty engine standards.

(5) Hybrid vehicle--A motor vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(6) Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of less than 10,000 pounds and certified to the United States Environmental Protection Agency's light-duty vehicle emission standards.

(7) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(8) Neighborhood electric vehicle--A motor vehicle that:

(A) is originally manufactured to meet, and does meet, the equipment requirements and safety standards established for "low-speed vehicles" in Federal Motor Vehicle Safety Standard No. 500 (49 Code of Federal Regulations §571.500);

(B) is a slow-moving vehicle, as defined by Texas Transportation Code, §547.001 that is able to attain a speed of more than 20 miles per hour but not more than 25 miles per hour in one mile on a paved, level surface;

(C) is a four-wheeled motor vehicle;

(D) is powered by electricity or alternative power sources;

(E) has a gross vehicle weight rating of less than 3,000 pounds; and

(F) is not a golf cart.

(9) Program--The Texas Clean Fleet Program established under this division.

§114.651. Applicability.

(a) Any eligible entity that will replace 25 or more on-road diesel vehicles within a twelve-month period with qualifying vehicles may apply for a grant under the Texas Clean Fleet Program to offset the cost of replacing those vehicles with alternative fuel or hybrid vehicles.

(b) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Local Government Code, Chapter 391, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

§114.652. Qualifying Vehicles.

(a) A qualifying vehicle is one that:

(1) is certified to current federal emissions standards;

(2) replaces a diesel-powered on-road vehicle of the same weight classification and use; and

(3) is a hybrid vehicle or fueled by an alternative fuel.

(b) As a condition of receiving a grant the qualifying vehicle must be continuously owned, registered, and operated in Texas by the grant recipient for at least five years from the date of reimbursement of the grant-funded expenses.

(c) A vehicle is not a qualifying vehicle if it:

(1) is a neighborhood electric vehicle;

(2) has been used as a qualifying vehicle to qualify for a grant under this division for a previous reporting period or by another entity; or

(3) has qualified for a similar grant or tax credit in another jurisdiction.

§114.653. Grant Eligibility.

(a) To be eligible for a grant under the program a project must result in a reduction in emissions of nitrogen oxides of at least 25%, based on:

(1) the baseline emission level set by the executive director; and

(2) the certified emission rate of the new vehicle or engine.

(b) The vehicle being replaced must:

(1) be an on-road vehicle that has been owned, registered, and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(2) satisfy any minimum average annual mileage or fuel usage requirements established by the executive director;

(3) satisfy any minimum percentage of annual usage requirements established by the executive director; and

(4) be in operating condition with at least two years of remaining useful life, as determined in accordance with criteria established by the executive director.

(c) At the discretion of the executive director, projects that result in a 25% reduction in other pollutants may be considered eligible for funding under this program.

(d) The executive director may establish additional criteria for purposes of prioritizing projects for selection. Such criteria may include, but are not limited to:

(1) nonattainment status of the primary location in which the eligible vehicles are used; or

(2) cost per ton benefits of the overall emissions being reduced.

§114.654. Usage and Disposition.

(a) Not less than 75% of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the executive director, must occur in Texas.

(b) A vehicle or engine replaced under this program must be rendered permanently inoperable in accordance with criteria established by the executive director.

§114.655. Grant Restrictions.

A recipient of a grant under this division shall use the grant to pay the costs of the project for which the grant is made, which may include the initial cost of the alternative fuel or hybrid vehicle. The recipient shall not use the grant to pay the recipient's administrative expenses.

§114.656. Eligible Grant Amounts.

(a) The eligible grant amount for each heavy-duty on-road vehicle being replaced is determined as follows:

(1) 80% of the cost for replacement of a vehicle that:

(A) was manufactured prior to implementation of federal or California emission standards; and

(B) is not certified to meet a specific emission level by either the United States Environmental Protection Agency or the California Air Resources Board;

(2) 70% of the cost for replacement of a vehicle with an engine certified to meet 1990 through 1997 federal emission standards;

(3) 60% of the cost for replacement of a vehicle with an engine certified to meet 1998 through 2003 federal emission standards; and

(4) 50% of the cost for replacement of a vehicle with an engine certified to meet 2004 and later federal emission standards.

(b) The eligible grant amount for each light-duty on-road vehicle being replaced is determined as follows:

(1) 80% of the cost for replacement of a light-duty diesel vehicle that:

(A) was manufactured prior to the implementation of certification requirements; and

(B) is not certified to meet either mandatory or voluntary emission certification standards;

(2) 70% of the cost for replacement of a light-duty diesel vehicle certified to meet federal Tier 1 emission standards phased in between 1994 and 1997; and

(3) 60% of the cost for replacement of a light-duty diesel vehicle certified to meet federal Tier 2 emission standards phased in between 2004 and 2009.

(c) The executive director may revise the standards for determining grant amounts as needed to reflect changes to federal emission standards and decisions on pollutants of concern.

§114.657. Reporting Requirements.

Grant recipients must meet the reporting requirements of their grant, which must occur no less frequently than annually.

§114.658. Implementation Schedule.

This division expires on August 31, 2017.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2009.

TRD-200904552

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 239-0177



## CHAPTER 290. PUBLIC DRINKING WATER

### SUBCHAPTER G. WATER SAVING

### PERFORMANCE STANDARDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §290.267, amendments to §§290.251 - 290.254, 290.256, and 290.260, and the repeal of §290.255.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 2009, the 81st Legislature passed House Bill (HB) 2667, relating to performance standards for plumbing fixtures sold in this state. HB 2667 amends Texas Health and Safety Code (THSC), §372.001 and §372.002 to increase efficiency standards, add performance, labeling, and testing requirements, add exemptions, add a five-year phase-in of new standards, and repeal TCEQ labeling and fee requirements for plumbing fixtures sold in this state. HB 2667 adds THSC, §§372.0025, 372.0045, and 372.006 to add exceptions for municipalities or counties, a phase-in of water saving performance standards, and performance standards for nonwater-supplied urinals, respectively. HB 2667 amends Texas Water Code, §5.701(q) to remove the commission's authority to collect fees for testing a product to ensure that the certification is accurate.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission proposes to also amend 30 TAC Chapter 291, Utility Regulations.

#### SECTION BY SECTION DISCUSSION

##### *§290.251. Purpose, Authority, and Definitions.*

The commission proposes to amend §290.251 to revise definitions for various plumbing fixtures relating to the subchapter. Terms to be revised are plumbing fixture and toilet. Terms to be added are plumbing fixture fitting, pressurized flushing device, and water closet. The term "ASME" is proposed to be deleted, as this acronym is no longer used throughout the subchapter, and the term "ASTM" is proposed to be deleted, as this organization is currently known only as ASTM International. As a result of the

additions and deletions, some existing definitions are proposed to be renumbered accordingly. This amendment is required by THSC, §372.001, as amended by HB 2667.

##### *§290.252. Design Standards.*

The commission proposes to amend §290.252 to include new performance standards and revise testing requirements for plumbing fixtures. A reference to testing standards established by the American National Standards Institute is removed. All references to testing procedures adopted by the commission for plumbing fixtures are removed. Performance, testing, and labeling requirements for plumbing fixtures prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 are added. Performance standards for nonwater-supplied urinals are also added. This amendment is required by THSC, §372.002, as amended by HB 2667.

##### *§290.253. Plumbing Fixture List.*

The commission proposes to amend §290.253 to change the process of providing test results for plumbing fixtures to the commission. All references to testing by the commission and fees were removed by the statute and therefore are removed from this section. This amendment is required by THSC, §372.002, as amended by HB 2667.

##### *§290.254. Removal from List.*

The commission proposes to amend §290.254 to remove the references to the commission charging fees, which was removed by the statute. The commission proposes to replace a reference to "the department" with "the agency." As a result of the removals, paragraphs are renumbered accordingly. This amendment is required by THSC, §372.002, as amended by HB 2667.

##### *§290.255. Fees.*

The commission proposes to repeal §290.255, concerning fees charged by the commission. This repeal is required because THSC, §372.002(d) is repealed by HB 2667.

##### *§290.256. Exemptions.*

The commission proposes to amend §290.256 to add additional exemptions for municipalities and counties that have situations that would require a greater quantity of water, nonwater-supplied urinals, and plumbing fixtures certified by the United States Environmental Protection Agency (EPA) under the WaterSense program. This amendment is required by THSC, §372.0025, as amended by HB 2667. The commission proposes to amend §290.256 to add additional exemptions for heavy-duty commercial urinals, and toilets that are mounted on the wall and discharge to the drainage system on the floor, are located in a correctional facility, are used in a bariatric application, are used by children at a daycare, or consist of a non-tank type commercial bowl connected to the plumbing system through a pressurized device. As a result of these additions, existing subsection (b) is relettered accordingly. This amendment is required by THSC, §372.002, as amended by HB 2667.

##### *§290.260. Labeling.*

The commission proposes to amend §290.260 to remove the TCEQ's labeling requirements for plumbing fixtures. This repeal is required because THSC, §372.003(a) and (b), concerning labeling requirements, are repealed by HB 2667. As a result of these deletions, the remaining subsections are relettered accordingly.



#### *§290.267. Phase-In of Water Saving Performance Standards.*

The commission proposes new §290.267 to add a five-year schedule for phasing in fixtures that comply with the new standards. Procedures for reporting the percentage of models to the commission annually are prescribed. This proposed new section expires September 1, 2013. This new section is required by THSC, §372.0045, as amended by HB 2667.

#### **FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT**

Jeff Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules implement HB 2667, and increase efficiency standards for plumbing fixtures sold in the state. The proposed rules provide for a five-year phase-in of water saving performance standards for plumbing fixtures. The phase-in of the standards is expected to allow manufacturers time to change their products to meet the new standards, and to allow retailers the opportunity to deplete their inventory. The proposed rules also provide exemptions from the standards for municipalities or counties that demonstrate that the new standards for plumbing fixtures would require greater quantities of water due to drainage system configurations. The proposed rules also provide exemptions from the certification requirements if manufacturers have been certified by the EPA under the WaterSense program. Lastly, under the proposed rules, the agency will no longer assess the plumbing fixture fee to manufacturers. This fee had been assessed by the agency in order to verify the manufacturer's certification of water saving performance standards for plumbing fixtures.

Manufacturers of plumbing fixtures sold, distributed, or offered for sale in the state are no longer required to pay the plumbing fixture fee as of September 1, 2009. The commission is still required to make and maintain a current list of plumbing fixtures that are certified by the manufacturer to meet water saving performance standards, but the commission no longer tests a listed fixture to determine the accuracy of the manufacturer's certification. Instead, in order to have a plumbing fixture included on the commission's list, the manufacturer must supply to the commission certified test results from a laboratory accredited by the American National Standards Institute that the fixture meets the prescribed water saving performance standards. The loss of fee revenue to the Water Resource Management Account 153 is estimated to be approximately \$41,000 each year.

#### **PUBLIC BENEFITS AND COSTS**

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a reduction in the use of water due to more efficient plumbing fixtures. Staff estimates that the phase-in of more efficient plumbing fixtures over a five-year period could result in water savings of 20% or more for each plumbing fixture that is installed.

No significant fiscal implications are anticipated for the estimated 116 plumbing fixture manufacturers that would be affected by the proposed rules. Manufacturers will no longer be required to pay fees to list their products with TCEQ, and will save \$50 per model series initially for new products and \$25 per model

series annually thereafter. There may be costs to develop new fixtures for some manufacturers in order to comply with the new water efficiency standards. Agency staff is not able to determine these costs at this time. Any additional costs to manufacturers are the result of the new statutory requirements and not of this rulemaking. However, because the new standards are similar to those approved through the EPA WaterSense program, it is assumed that many manufacturers already have products that comply with the new standards.

Homes and businesses that install plumbing fixtures that comply with the new requirements will decrease their indoor water use and therefore may experience cost savings for their utility bills.

#### **SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT**

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Manufacturers who are small or micro-businesses will no longer be required to pay fees to list their products with TCEQ, and will save \$50 per model series initially for new products and \$25 per model series annually thereafter. There may be costs to develop new fixtures for some of the estimated seven small or micro-businesses that manufacture plumbing fixtures in order to comply with the new water efficiency standards. Agency staff is not able to determine if there are costs and what the costs would be at this time. Any additional costs to manufacturers are the result of the new statutory requirements and not of this rulemaking. Because the new standards are similar to those approved through the EPA WaterSense program, it is assumed that many manufacturers already have products that comply with the new standards.

#### **SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS**

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and to protect the health, safety, environmental, and economic welfare of the state.

#### **LOCAL EMPLOYMENT IMPACT STATEMENT**

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### **DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION**

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking requires a regulatory impact analysis under Texas Government Code, §2001.0225. The proposed rulemaking may be a "major environmental rule" under Texas Government Code, §2001.0225. Although the specific intent of the rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, or the public health and safety of the state or a sector of the state, these rules do result in protecting the environment, or conserving water resources. The purpose of this rulemaking is to require certain standards for plumbing fixtures in order to conserve water. These new standards are being implemented because they are required by state law. The proposed rules also repeal the commission's authority to charge fees for testing products to make sure that the products meet the standards. Because these plumbing fixtures that meet the new standards should not cost any more than they would under existing standards, there is no impact on the economy or jobs. Also, these rules do not exceed a standard of federal law that is

not specifically required by state law, exceed an express requirement of state law, exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, or are proposed solely under the general powers of the agency instead of under a specific state law.

Therefore, no regulatory impact analysis is required under Texas Government Code, §2001.0225 for this rulemaking.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed amendment constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to describe plumbing fixtures standards in state law to conserve water and to repeal the agency's authority to test products to ensure that they meet the standards and to charge fees for this testing. The proposed amendment would substantially advance this stated purpose by placing the standards in the rule and repealing the testing and fee program in the rule. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. There are no other reasonable or practicable alternatives to this rulemaking because it is required by statute.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on November 17, 2009 at 10:00 AM in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-038-290-PR. The comment period closes November 23, 2009. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Scott Swanson, Water Rights Section, (512) 239-0703.

#### 30 TAC §§290.251 - 290.254, 290.256, 290.260, 290.267

#### STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendments and new section are also proposed under Texas Health and Safety Code (THSC), Chapter 372, concerning Environmental Performance Standards for Plumbing Fixtures, which requires the commission to maintain a list of certified plumbing fixtures that may be sold in the state.

The proposed amendments and new section implement THSC, §§372.001, 372.002, 372.0025, 372.0045, and 372.006; and TWC, §5.701.

#### §290.251. Purpose, Authority, and Definitions.

(a) Purpose. The purpose of this subchapter is to establish water saving performance standards and labeling requirements for plumbing fixtures; establish labeling requirements for dishwashing machines, lawn sprinklers, and clothes washing machines; and establish reporting requirements for clothes washing machines. This subchapter applies to plumbing fixtures, dishwashing machines, lawn sprinklers, and clothes washing machines that are manufactured, imported, or otherwise supplied for sale in Texas unless the item is manufactured exclusively for sale outside of the state.

(b) Authority. The authority for these sections is Texas Health and Safety Code, Chapter 372, titled *Environmental Performance Standards for Plumbing Fixtures*.

(c) Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) ANSI--The American National Standards Institute.
- ~~{(2) ASME--The American Society of Mechanical Engineers.}~~
- ~~{(3) ASTM--The American Society for Testing and Materials.}~~
- (2) ~~[(4)]~~ Commercial pre-rinse spray valve--A handheld device that is designed and marketed for use with commercial dishwashing and ware washing equipment and that is used to spray water on dishes, flatware, and other food service items to remove food residue before the items are cleaned in a dishwasher or ware washer or by hand.
- (3) ~~[(5)]~~ Import--The physical movement of merchandise into the State of Texas, including shipments to distributors, shipments to factory distributing branches, direct factory sales, shipments to re-

tailers, shipments to factory distributing branches, shipments to sales districts, and shipments to factory-owned distributing outlets.

(4) ~~[(6)]~~ Importer--A business or individual that brings into the state plumbing fixtures from other countries or states for resale or installation (other than for their own domicile) within the state.

(5) ~~[(7)]~~ Major supplier--A business or individual that provides plumbing fixtures to others for resale or installation (other than for their own domicile) within the state.

(6) ~~[(8)]~~ Manufacturer--Someone who manufactures plumbing fixtures or clothes washing machines.

(7) ~~[(9)]~~ Model--A type or design of a plumbing fixture.

(8) ~~[(10)]~~ Order--A request to purchase plumbing fixtures from a manufacturer, major supplier, or importer.

(9) ~~[(11)]~~ Plumbing fixture--A device that receives water, waste, or both and discharges the water, waste, or both into a drainage system. The term includes a kitchen sink, utility sink, lavatory, bidet, bathtub, shower [A sink faucet, lavatory faucet, faucet aerator, shower head], urinal, toilet, flush valve toilet, or drinking water fountain[- or commercial pre-rinse spray valve].

(10) Plumbing fixture fitting--A device that controls and directs the flow of water. The term includes a sink faucet, lavatory faucet, shower head, bath filler, or commercial pre-rinse spray valve.

(11) Pressurized flushing device--A device that contains a valve that:

(A) is attached to a pressurized water supply pipe that is of sufficient size to deliver water at the necessary rate of flow to ensure flushing when a valve is open; and

(B) opens on actuation to allow water to flow into the fixture at a rate and in a quantity necessary for the proper operation of the fixture and gradually closes to avoid water hammer.

(12) Toilet--A ~~[toilet or]~~ water closet ~~[except a wall-mounted toilet that employs a flushometer valve].~~

(13) Water closet--A plumbing fixture that has a water containing receptor that receives liquid and solid body waste and, on actuation, conveys the waste through an exposed integral trap seal into a drainage system.

(14) ~~[(13)]~~ Water consumption factor--The quotient of the total weighted per cycle consumption divided by the capacity of the clothes washer, as stated in 10 Code of Federal Regulations Part 430, Subpart B, Appendix J, September 1, 2001.

#### *§290.252. Design Standards.*

(a) A person may not sell, offer for sale, distribute, or import into the State of Texas a plumbing fixture for use in the state unless the plumbing fixture meets the water saving performance standards provided by subsection (b) of this section and the plumbing fixture is listed in §290.253 of this title (relating to Plumbing Fixture List).

(b) The water saving performance standards for a plumbing fixture are ~~[those established by the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), current revision, or]~~ the following standards~~[-, whichever are the more restrictive].~~

(1) The maximum flow from a sink or lavatory faucet or a faucet aerator shall not exceed 2.20 gallons of water per minute at a pressure of 60 pounds per square inch ~~[when tested in accordance with ANSI testing procedures].~~

(2) The maximum flow from a shower head shall not exceed ~~2.5~~ ~~[2.75]~~ gallons of water per minute at a constant pressure over ~~[equal to]~~ 80 pounds per square inch ~~[when tested in accordance with ANSI testing procedures].~~

(3) The maximum volume of water per flush from a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state before January 1, 2014:

(A) maximum flow shall not exceed an average of one gallon of water per flush; and [when tested in accordance with ANSI testing procedures].

(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals."

(4) Except as provided for in §290.256 of this title (relating to Exemptions), for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014:

(A) maximum flow shall not exceed an average of 0.5 gallons of water per flush; and

(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;" or

(ii) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals."

(5) For a toilet sold, offered for sale, or distributed in this state before January 1, 2014:

(A) ~~[(4)]~~ The maximum volume of water per flush ~~[from a toilet]~~ shall not exceed an average of 1.60 gallons; and ~~[when tested in accordance with ANSI testing procedures].~~

(B) The toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;" and

(ii) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped with a Dual Flushing Device."

(6) Except as provided for in §290.256 of this title, for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014 must be:

(A) A dual flush toilet that meets the following standards:

(i) The average flush volume of two reduced flushes and one full flush may not exceed 1.28 gallons; and

(ii) The toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(I) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals;" and

(II) American Society of Mechanical Engineers Standard A112.19.4-2006 "Six-Liter Water Closets Equipped with a Dual Flushing Device;" or

(B) A single flush toilet that meets the following standards:

(i) The average flush volume may not exceed 1.28 gallons; and

(ii) The toilet must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals."

{(5) The maximum volume of water per flush from a wall mounted toilet that employs a flushometer valve shall not exceed an average of 2.00 gallons when tested in accordance with ANSI testing procedures.}

(7) [(6)] All drinking water fountains shall be operated by a self-closing valve.

(8) [(7)] The maximum flow rate from a commercial pre-rinse spray valve shall not exceed 1.6 gallons of water per minute when tested with the method specified in ASTM International Standard F2324-03.

(c) Nonwater-supplied urinal performance standards are the following:

(1) A person may not sell, offer for sale, or distribute in this state a nonwater-supplied urinal in this state unless the nonwater-supplied urinal:

(A) meets the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals;" or

(ii) International Association of Plumbing and Mechanical Officials Standard ANSI Z124.9-2004 "Plastic Urinal Fixtures;"

(B) provides a trap seal that complies with the building code of the local government in which the urinal is installed; and

(C) permits the uninhibited flow of waste through the urinal to the sanitary drainage system.

(2) The manufacturer or importer must submit to the executive director certified test results from a laboratory accredited by the American National Standards Institute verifying that the nonwater-supplied urinal conforms to the requirements described by paragraph (1) of this subsection.

(3) A person who installs a nonwater-supplied urinal shall install water distribution and fixture supply piping sized to accommodate a water supply urinal to an in-wall point immediately adjacent to the nonwater-supplied urinal location so that the nonwater-supplied urinal can be replaced with a water-supplied urinal if desired by the owner or required by a code enforcement officer.

(4) A person who owns a nonwater-supplied urinal shall clean and maintain the nonwater-supplied urinal in accordance with the manufacturer's instructions.

#### *§290.253. Plumbing Fixture List.*

[(a)] The commission shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer [or importer] to meet the water saving performance standards established by §290.252(b) of this title (relating to Design Standards). To have a plumbing fixture included on the commission's current list, a manufacturer [or importer] must:

(1) furnish identification and the performance specifications of the plumbing fixture; and [method and testing data that clearly indicates that the plumbing fixture was tested in accordance with American National Standards Institute or the American Society for Testing and Materials requirements and complies with the flow requirements established in §290.252(b) of this title; or]

(2) furnish certified test results from a laboratory accredited by the American National Standards Institute verifying that the plumbing complies with the flow requirements established in §290.252(b) of this title.

[(2) submit an identified sample plumbing fixture to the commission for testing and verification of water saving performance standards by the department; and]

[(3) pay the appropriate fee as listed in §290.255 of this title (relating to Fees).]

[(b) The commission retains the right to request a sample of the plumbing fixture for testing.]

[(c) The commission may assess against a manufacturer or importer a reasonable fee for an inspection of a commercial pre-rinse spray valve to determine the accuracy of the manufacturer's or importer's certification in an amount determined by the commission to cover the expenses incurred in the administration of this chapter.]

#### *§290.254. Removal from List.*

(a) A plumbing fixture listed in §290.253 of this title (relating to Plumbing Fixture List) shall be removed from the list if:

(1) the commission finds the manufacturer's or importer's certification to be inaccurately certified;

[(2) the manufacturer or importer is delinquent in paying the fee as set forth in §290.255 of this title (relating to Fees); or]

(2) [(3)] the agency [department] finds that the fixture does not meet the standards set forth in §290.252(b) of this title (relating to Design Standards).

(b) Prior to removal of the plumbing fixture from the list, a manufacturer or importer shall have the right to seek a hearing with the commission. A hearing held pursuant to this section shall be held in accordance with the Administrative Procedure Act (APA) and the commission's formal hearing procedures.

[(c) A plumbing fixture reinstated on the list after being removed due to a delinquent renewal fee will be considered a new product on the list.]

#### *§290.256. Exemptions.*

(a) These sections do not apply to a plumbing fixture:

(1) that has been ordered by or is in the inventory of a building contractor or a wholesaler or retailer in Texas on or before January 1, 1992;

(2) such as a safety shower or aspirator faucet, that, because of the fixture's specialized function, cannot meet the standards established by these sections (example: fixtures in handicapped modified showers, etc.);

(3) originally installed before January 1, 1992, that is removed and reinstalled in the same building on or after that date; [or]

(4) imported only for use at the importer's domicile;[-]

(5) that is a nonwater supplied urinal;

(6) that has been certified by the United States Environmental Protection Agency under the WaterSense program; or

(7) if it has been determined by the governing body of a municipality or county that to flush a public sewer system located in the municipality or county in a manner consistent with public health, a greater quantity of water is required because of the configuration of the drainage system of buildings located in the municipality or county or the public sewer system.

(b) The water saving performance standards for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by §290.252(b)(3) of this title (relating to Design Standards) if the urinal was designed for heavy-duty commercial applications.

(c) The water saving performance standards for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by §290.252(b)(5) of this title if the toilet is a water closet that has a design not typically found in a residential application or that is designed for a specialized application, including a water closet that:

(1) is mounted on the wall and discharges to the drainage system on the floor;

(2) is located in a correctional facility, as defined by Texas Penal Code, §1.07;

(3) is used in a bariatric application;

(4) is used by children at a daycare facility; or

(5) consists of a non-tank type commercial bowl connected to the plumbing system through a pressurized flushing device.

(d) [(b)] These sections do not apply to a commercial pre-rinse spray valve that:

(1) as of January 1, 2006:

(A) is in the inventory of a commercial pre-rinse spray valve retailer, distributor, lessor, or importer; or

(B) has been ordered by a commercial pre-rinse spray valve retailer, distributor, lessor, or importer and is delivered before February 1, 2006; and

(2) is sold before September 1, 2006.

#### *§290.260. Labeling.*

[(a) Labeling requirements. A person may not sell, offer for sale, distribute, or import into this state a plumbing fixture unless the plumbing fixture, including each component of a toilet, flush valve toilet, or urinal and the associated packaging are marked and labeled in accordance with these sections. The labeling requirements in these sections shall take effect on October 25, 1994.]

[(1) Each water closet, urinal, and flush valve shall be marked or labeled in accordance with the National Energy Policy Act of 1992 (42 United States Code §6294 et seq.) and as amended.]

[(2) Each water closet, urinal, and flush valve package shall be marked or labeled in accordance with the National Energy Policy Act of 1992 (42 United States Code §6294 et seq.) and as amended.]

[(3) Each faucet, aerator, and showerhead shall be marked in accordance with the National Energy Policy Act of 1992 (42 United States Code §6294 et seq.) and as amended, except that each showerhead, flow restricting or controlling spout end device and aerator shall bear a permanent legible mark indicating the flow rate, expressed in gallons per minute (gpm). The flow rate shall be the actual flow rate or the maximum flow rate specified in §290.252 of this title (relating to Design Standards).]

[(4) Each faucet, aerator, and showerhead package shall have the flow rate expressed in gallons per minute (gpm) clearly marked on the front.]

(a) [(b)] Prohibitions. A person may not sell, offer for sale, distribute, or import into this state a new commercial or residential clothes washing machine, dish washing machine, or lawn sprinkler unless the clothes washing machine, dish washing machine, or lawn sprinkler is marked or labeled in accordance with these sections.

(1) Each clothes washing machine and dish washing machine shall have an attached label that shows the amount of water used per cycle.

(2) Each lawn sprinkler shall be marked with the water usage expressed in gallons per minute (gpm) by either a permanent mark on each sprinkler, or a label or tag attached to each sprinkler.

(b) [(c)] Exemptions. This section does not apply to those clothes washing machines and dish washing machines that are subject to and are in compliance with the labeling requirements of the National Appliance Energy Conservation Act of 1987, Public Law 100-12 (42 United States Code §6294) and as amended.

#### *§290.267. Phase-In of Water Saving Performance Standards.*

(a) Notwithstanding §290.252(b)(3) and (5) of this title (relating to Design Standards), at least the following percentage of the models of urinals and of the models of toilets offered for sale by a manufacturer in this state must meet the requirements of §290.252(b)(4) and (6) of this title, respectively:

(1) 50% of the models of urinals and of the models of toilets offered for sale on January 1, 2010;

(2) 67% of the models of urinals and of the models of toilets offered for sale on January 1, 2011;

(3) 75% of the models of urinals and of the models of toilets offered for sale on January 1, 2012; and

(4) 85% of the models of urinals and of the models of toilets offered for sale on January 1, 2013.

(b) Not later than January 31 of each year, a manufacturer that offers urinals or toilets for sale in this state shall notify the executive director in writing of the percentage of models of urinals and of the models of toilets offered for sale by the manufacturer in this state that meet the requirements of §290.252(b)(4) and (6) of this title, respectively.

(c) This section expires September 1, 2013.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2009.  
TRD-200904548

Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Earliest possible date of adoption: November 22, 2009  
For further information, please call: (512) 239-0177



### 30 TAC §290.255

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the Texas Water Code. The repeal is also proposed under Texas Health and Safety Code Chapter 372, concerning Environmental Performance Standards for Plumbing Fixtures, which requires the commission to maintain a list of certified plumbing fixtures that may be sold in the state.

The proposed repeal implements Texas Health and Safety Code, §372.002.

#### §290.255. Fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2009.

TRD-200904549

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 239-0177



## CHAPTER 291. UTILITY REGULATIONS

### SUBCHAPTER H. UTILITY SUBMETERING AND ALLOCATION

#### 30 TAC §291.127

The Texas Commission on Environmental Quality (agency or commission) proposes an amendment to §291.127.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

In 2009, the 81st Legislature passed House Bill (HB) 2667, relating to performance standards for plumbing fixtures sold in this state. HB 2667 amends the Texas Water Code (TWC), §13.506(b) to remove the specification for installation of toilets that meet the old standards (1.6 gallons) for apartments that are required to retrofit toilets due to submetering rules.

#### SECTION DISCUSSION

§291.127. *Submeters or Point-of-Use Submeters and Plumbing Fixtures.*

The commission proposes to amend §291.127 to remove the specification for installation of toilets that meet the old standards (1.6 gallons) for apartments that are required to retrofit toilets due to submetering rules. The amendment is required by TWC, §13.506(b), as amended by HB 2667.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission proposes to also amend 30 TAC Chapter 290, Public Drinking Water.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule implements HB 2667 and increases efficiency standards for plumbing fixtures sold in the state.

Owners of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium that are required to retrofit toilets due to submetering rules will have to install toilets that meet more stringent water use standards, though these requirements are not expected to result in any additional costs over current requirements.

#### PUBLIC BENEFITS AND COSTS

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be a reduction in the use of water due to more efficient plumbing fixtures. Staff estimates that the phase-in of more efficient plumbing fixtures over a five-year period could result in water savings of 20% or more for each plumbing fixture that is installed.

Homes, apartments, and businesses that install plumbing fixtures that comply with the new requirements will decrease their indoor water use and therefore may experience cost savings for their utility bills.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. Owners of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium that are required to retrofit toilets due to submetering rules will have to install toilets that meet more stringent water use standards, though these requirements are not expected to result in any additional costs over current requirements.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to comply with state law and to protect the health, safety, environmental, and economic welfare of the state.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission evaluated the proposed amendment and performed an analysis of whether the proposed amendment requires a regulatory impact analysis under Texas Government Code, §2001.0225. The proposed amendment may be a "major environmental rule" under Texas Government Code, §2001.0225. Although the specific intent of the rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, or the public health and safety of the state or a sector of the state, this rule does result in protecting the environment, or conserving water resources. The purpose of this rulemaking is to implement HB 2667 to require owners of rental property or managers of condominiums, not later than the first anniversary they begin to bill for submetered or allocated water service, to remove toilets that exceed a maximum flow of 3.5 gallons per flushing with toilets that meet the standards prescribed in Texas Health and Safety Code (THSC), §372.002. Because plumbing fixtures that meet the new standards should not cost any more than they would under existing standards, there is no impact on the economy or jobs. Also, the rulemaking does not exceed a standard set of federal law that is not specifically required by state law, exceed an express requirement of state law, exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and is not being proposed solely under the general powers of the agency instead of under a specific state law. Therefore, no regulatory impact analysis is required under Texas Government Code, §2001.0225 for this rulemaking.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed amendment and performed an analysis of whether the proposed amendment constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed amendment is to implement HB 2667 to require owners of rental property or managers of condominiums, not later than the first anniversary they begin to bill for submetered or allocated water service, to remove toilets that exceed a maximum flow of 3.5 gallons per flushing with toilets that meet the standards prescribed in THSC, §372.002. The proposed amendment would substantially advance this stated purpose by placing the revised standard in the rule. Promulgation and enforcement of the proposed amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. There are no other reasonable or practicable alternatives to this rulemaking because it is required by statute.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Im-

plementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on November 17, 2009 at 10:00 AM in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-038-290-PR. The comment period closes November 23, 2009. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Scott Swanson, Water Rights Section, (512) 239-0703.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendment is also proposed under TWC, §13.506(b), concerning Plumbing Fixtures, which requires owners of rental property or managers of condominiums not later than the first anniversary they begin to bill for submetered or allocated water service, to remove toilets that exceed a maximum flow of 3.5 gallons per flushing with toilets that meet the standards prescribed in Texas Health and Safety Code, §372.002.

The proposed amendment implements TWC, §13.506(b).

§291.127. *Submeters or Point-of-Use Submeters and Plumbing Fixtures.*

(a) Submeters or point-of-use submeters.

(1) Same type submeters or point-of-use submeters required. All submeters or point-of-use submeters throughout a property must use the same unit of measurement, such as gallon, liter, or cubic foot.

(2) Installation by owner. The owner shall be responsible for providing, installing, and maintaining all submeters or point-of-use submeters necessary for the measurement of water to tenants and to common areas, if applicable.

(3) Submeter or point-of-use submeter tests prior to installation. No submeter or point-of-use submeter may be placed in service unless its accuracy has been established. If any submeter or point-of-use submeter is removed from service, it must be properly tested and calibrated before being placed in service again.

(4) Accuracy requirements for submeters and point-of-use submeters. Submeters must be calibrated as close as possible to the condition of zero error and within the accuracy standards established by the American Water Works Association (AWWA) for water meters. Point-of-use submeters must be calibrated as closely as possible to the condition of zero error and within the accuracy standards established by the American Society of Mechanical Engineers (ASME) for point-of-use and branch-water submetering systems.

(5) Location of submeters and point-of-use submeters. Submeters and point-of-use submeters must be installed in accordance with applicable plumbing codes and AWWA standards for water meters or ASME standards for point-of-use submeters, and must be readily accessible to the tenant and to the owner for testing and inspection where such activities will cause minimum interference and inconvenience to the tenant.

(6) Submeter and point-of-use submeter records. The owner shall maintain a record on each submeter or point-of-use submeter which includes:

- (A) an identifying number;
- (B) the installation date (and removal date, if applicable);
- (C) date(s) the submeter or point-of-use submeter was calibrated or tested;
- (D) copies of all tests; and
- (E) the current location of the submeter or point-of-use submeter.

(7) Submeter or point-of-use submeter test on request of tenant. Upon receiving a written request from the tenant, the owner shall either:

(A) provide evidence, at no charge to the tenant, that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months and determined to be within the accuracy standards established by the AWWA for water meters or ASME standards for point-of-use submeters; or

(B) have the submeter or point-of-use submeter removed and tested and promptly advise the tenant of the test results.

(8) Billing for submeter or point-of-use submeter test.

(A) The owner may not bill the tenant for testing costs if the submeter fails to meet AWWA accuracy standards for water meters or ASME standards for point-of-use submeters.

(B) The owner may not bill the tenant for testing costs if there is no evidence that the submeter or point-of-use submeter was calibrated or tested within the preceding 24 months.

(C) The owner may bill the tenant for actual testing costs (not to exceed \$25) if the submeter meets AWWA accuracy standards or the point-of-use submeter meets ASME accuracy standards and evidence as described in paragraph (7)(A) of this subsection was provided to the tenant.

(9) Bill adjustment due to submeter or point-of-use submeter error. If a submeter does not meet AWWA accuracy standards or a point-of-use submeter does not meet ASME accuracy standards and the

tenant was overbilled, an adjusted bill must be rendered in accordance with §291.125(k) of this title (relating to Billing). The owner may not charge the tenant for any underbilling that occurred because the submeter or point-of-use submeter was in error.

(10) Submeter or point-of-use submeter testing facilities and equipment. For submeters, an owner shall comply with the AWWA's meter testing requirements. For point-of-use meters, an owner shall comply with ASME's meter testing requirements.

(b) Plumbing fixtures. After January 1, 2003, before an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may implement a program to bill tenants for submetered or allocated water service, the owner or manager shall adhere to the following standards:

(1) Texas Health and Safety Code, §372.002, for sink or lavatory faucets, faucet aerators, and showerheads;

(2) perform a water leak audit of each dwelling unit or rental unit and each common area and repair any leaks found; and

(3) not later than the first anniversary of the date an owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium begins to bill for submetered or allocated water service, the owner or manager shall:

(A) remove any toilets that exceed a maximum flow of 3.5 gallons per flush; and

(B) install ~~1.6-gallon~~ toilets that meet the standards prescribed by Texas Health and Safety Code, §372.002.

(c) Plumbing fixture not applicable. Subsection (b) of this section does not apply to a manufactured home rental community owner who does not own the manufactured homes located on the property of the manufactured home rental community.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2009.

TRD-200904550

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 239-0177



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

#### **CHAPTER 159. SPECIAL PROGRAMS**

##### **37 TAC §159.3**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*



The Texas Board of Criminal Justice files this notice of intent to repeal §159.3, concerning Continuity of Care System for Offenders with Mental Impairments/Memorandum of Understanding.

The purpose of the repeal is to provide flexibility to the Texas Department of Criminal Justice in negotiating the memorandum of understanding with the Texas Department of State Health Services, the Texas Department of Public Safety, and 122 community supervision and corrections departments.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for the first five years after the repeal, there will be no fiscal implications for state or local government.

Mr. McGinty has also determined that for the first five years after the repeal, there will not be an economic impact on the public because of the repeal. There will be no anticipated effect on small or micro-businesses. The anticipated public benefit will be to provide flexibility to all agencies identified above in providing a continuity of care system for offenders with mental impairments.

Comments on the proposed repeal should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, melinda.bozarth@tdcj.state.tx.us. Comments will be accepted for 30 days, following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Health and Safety Code, §614.013.

Cross Reference to Statutes: Texas Health and Safety Code, §614.013, and Texas Government Code §492.013.

*§159.3. Continuity of Care System for Offenders with Mental Impairments/Memorandum of Understanding.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 8, 2009.

TRD-200904532

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: November 22, 2009

For further information, please call: (936) 437-6003



## **TITLE 43. TRANSPORTATION**

### **PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY**

#### **CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY**

##### **43 TAC §57.56**

The Automobile Burglary and Theft Prevention Authority (ABTPA or Authority) proposes an amendment to Chapter 57, relating to the ABTPA. The proposed amendment changes the date on which the Authority's advisory committees will be abolished in §57.56. The Government Code §2110.008 requires the Authority to approve the continuation of its advisory committees and re-

set the date of their abolishment, or the committees will be abolished by operation of law. The proposed amendment to §57.56 changes the date to August 31, 2014. Adoption of this proposal will act as the Authority's approval of the continuation of these committees.

Charles Caldwell, Director of the ABTPA, has determined that for the first five-year period the amendment is in effect, there will be no additional fiscal implications for state and local governments as a result of enforcing or administering the proposed amendment.

Mr. Caldwell has also determined that, for each of the first five years the proposed amendment will be in effect, the public benefit anticipated will be better notice to the public as to the continuation of its advisory committees, which assist the Authority in its mission to prevent and reduce auto theft and burglary. There is no effect on a local economy. There is no anticipated adverse economic effect on micro or small businesses as a result of the proposed amendment. There are no persons required to comply with this amendment, and, thus, there is no anticipated economic cost relating to compliance.

Comments on the proposed amendments may be submitted to Charles Caldwell, Director, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731, for a period of 30 days from the date that the proposed action is published in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties, and Government Code §2110.008, which the Authority interprets as requiring it to set a date of abolishment for its advisory committees or face automatic abolishment of them.

The following are the statutes, articles, or codes affected by the amendments: §57.56 - Texas Civil Statutes, Article 4413(37), §6(a); Government Code, §2110.008.

*§57.56. General Requirements for Advisory Committees.*

The border solutions advisory committee, the grantee advisory committee and the insurance fraud advisory committees are subject to the following provisions:

(1) - (5) (No change.)

(6) Committee's term. Each committee is abolished on August 31, 2014 [~~August 31, 2010~~], unless the ABTPA amends this paragraph to establish a different date.

(7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 9, 2009.

TRD-200904546

Charles Caldwell

Director

Automobile Burglary and Theft Prevention Authority

Earliest possible date of adoption: November 22, 2009

For further information, please call: (512) 374-5101



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

The Commissioner of Insurance adopts amendments to §7.202, concerning insurance holding company systems, and to §7.402, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations for year-end 2008. The amendments to §7.402 are adopted without changes to the proposed text published in the July 24, 2009, issue of the *Texas Register* (34 TexReg 4818). The amendments to §7.202 are adopted with two changes to update obsolete citations to the Insurance Code.

**REASONED JUSTIFICATION.** The adopted amendments to §7.402 are necessary to regulate risk-based capital and surplus requirements for (i) property and casualty insurers, (ii) life insurance companies, (iii) fraternal benefit societies, (iv) stipulated premium companies that do business in other states, (v) HMOs, and (vi) insurers filing the National Association of Insurance Commissioners (NAIC) Health Blank. These insurers and HMOs are referred to collectively as "carriers" in this adoption. The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholder surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure.

Section 7.402(d) adopts by reference the NAIC risk-based capital formulas for use by insurers and health maintenance organizations. The amendments to §7.402(d) are necessary to adopt by reference the 2008 NAIC risk-based capital formulas to be used for year-end 2008. These formulas include (i) the 2008 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, (ii) the 2008 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, (iii) the 2008 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and (iv) the 2008 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies. Copies of the documents adopted by reference are available for inspection in the office of the Texas Department of Insurance, Financial Analysis Division, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, MC 303-1A, 333 Guadalupe, Austin, Texas.

Chapter 823 of the Insurance Code regulates insurance holding company systems. Subchapter B, Chapter 7, of Title 28 of the Texas Administrative Code sets forth the administrative regulations for implementing the Insurance Code Chapter 823. Section 823.015 authorizes the Commissioner to exempt from the provisions of Chapter 823 of the Insurance Code and the administrative regulations in Subchapter B, except the registration requirement, any commercially domiciled insurer if the Commissioner determines that the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state. Adopted §7.202 implements §823.015. Section 7.202(a) defines the terms that are used in the section. Section 7.202(a)(1) defines the term "Act." The obsolete reference in §7.202(a)(1) to "The Insurance Code, Article 21.49-1, as amended (Senate Bill 233, 62nd Legislature of the State of Texas)" is updated in adopted §7.202(a)(1) to "The Insurance Code, Chapter 823." Section 7.202(a)(15) defines the term "Insurer." The obsolete reference in §7.202(a)(15) to "the Insurance Code, Article 21.49-1" is updated in adopted §7.202(a)(15) to "the Insurance Code, Chapter 823." The Insurance Holding Company System Regulatory Act, formerly Article 21.49-1 of the Insurance Code, was repealed in the nonsubstantive Insurance Code revision, Acts 2001, 77th Legislature, Chapter 1419, §1, effective June 1, 2003. The Act was re-adopted as Chapter 823 in the same nonsubstantive Insurance Code revision.

Adopted §7.202(b) addresses the procedures for the exemption authorized by the Insurance Code §823.015. Amendments are also adopted to the title of Subchapter B and to §7.202(b) to make minor, nonsubstantive changes. These changes are necessary to (i) update references to the "Insurance Holding Company System Regulatory Act," to the "Act," and Insurance Code references to be consistent with the nonsubstantive Insurance Code revision enacted in Acts 2001, 77th Legislature, Chapter 1419, §1, effective June 1, 2003; (ii) update obsolete Texas Administrative Code references; and (iii) correct the name of the Department's Financial Analysis Division. Specifically, the adopted amendments amend the title of Subchapter B by changing the word "System" to "Systems" and deleting the words "Regulatory Act." The adopted amendments to §7.202(b)(1) replace two statutory references to the "Act:" with "the Insurance Code Chapter 823." The adopted amendments to §7.202(b)(1) replace the statutory reference to the "Act, §2(s)" with "the Insurance Code §823.015." The Act, §2(s) was repealed in the nonsubstantive Insurance Code revision, Acts 2001, 77th Legislature, Chapter 1419, §1, effective June 1, 2003. The Act, §2(s) was re-adopted as §823.015 in the same nonsubstantive Insurance Code revision. The adopted amendments to §7.202(b)(1)(B)(iii) add a reference to §7.402 (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs) and remove the

obsolete references to §7.401 and §7.410. The adopted amendment to §7.202(b)(2) replaces the statutory reference to "Article 21.49-2C" with "Chapter 827." Article 21.49-2C was repealed in the nonsubstantive Insurance Code revision, Acts 2001, 77th Legislature, Chapter 1419, §1, effective June 1, 2003. Article 21.49-2C was re-adopted as Chapter 827 in the same nonsubstantive Insurance Code revision.

Simultaneously with the adoption of these amendments, the Department adopts the repeal of §7.401, concerning risk-based capital and surplus requirements for insurers and HMOs for year-end 2006, and §11.809, concerning risk-based capital for HMOs and insurers filing the NAIC health blank for year-end 2006. The adopted repeals of §7.401 and §11.809 are also published in this issue of the *Texas Register*.

**HOW THE SECTIONS WILL FUNCTION.** Adopted §7.402(d) adopts by reference the 2008 NAIC risk-based capital formulas for year-end 2008, replacing the year-end 2007 formulas. Insurers and health maintenance organizations will use these formulas to comply with the Department's regulatory requirements pertaining to minimum amounts of capital and policyholder surplus appropriate for carriers to support their overall business operations in consideration of their size and risk exposure. The NAIC formulas provide the insurance industry and the Department with a widely used regulatory standard for this purpose. Other non-substantive editorial amendments have been made to adopted §7.202 and §7.402 to improve ease of use and readability, including updating of obsolete statutory references and obsolete Texas Administrative Code references.

**SUMMARY OF COMMENTS.** The Department did not receive any comments on the published proposal.

## **SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEMS**

### **28 TAC §7.202**

**STATUTORY AUTHORITY.** The amendments are adopted under the Insurance Code Chapters 404 and 441 and §§441.005, 441.051, 541.401, 822.210, 841.205, 884.206, 823.012, 843.404, 885.401, 982.105, 982.106, and 36.001. Chapters 404 and 441 address the duties of the Department when an insurer's solvency is impaired. Chapter 404 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies. Under §441.005, the Commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Section 441.051 specifies "the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency" and includes certain statutorily specified conditions, including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 541.401 authorizes the Commissioner to adopt reasonable rules necessary to accomplish the purposes of trade practices regulation in Chapter 541. Section 822.210, §841.205, and §884.206 authorize the Commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 823.012 authorizes the Commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.404 authorizes the Commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of

statutory minimum levels to ensure financial solvency of health maintenance organizations for the protection of enrollees. Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the Commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the Department to use the annual report in determining a society's financial solvency. Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

### *§7.202. Definitions.*

(a) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Insurance Code, Chapter 823.

(2) Affiliate--An affiliate of, or person affiliated with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. If such controlling person includes a member of the immediate family of a person, any other person that is an affiliate of such family member shall be deemed to be an affiliate of such controlling person.

(3) Commercially domiciled insurer--A foreign or alien insurer authorized to do business in this state that during its three preceding fiscal years taken together, or any lesser period if it has been licensed to transact business in this state only for that lesser period, has written an average of more gross premiums in this state than it has written in its state of domicile during the same period, and such gross premiums constitute 30% or more of its total gross premiums everywhere in the United States for that three-year or lesser period, as reported in its three most recent annual statements. To determine if an insurer is a commercially domiciled insurer, the annual average ratio for premium receipts addressed in subparagraphs (A) and (B) of this paragraph shall be calculated, as follows:

(A) total Texas premium for the preceding three fiscal years (or any lesser period if licensed in Texas less than three years) divided by total premium countrywide for the preceding three years; and

(B) total premium in the state of domicile for the preceding three years divided by total premium countrywide for the preceding three years.

(4) Commissioner--The commissioner of insurance of the State of Texas, the commissioner's senior associates, associates or deputies, or their designees, as appropriate.

(5) Control--The term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, or with members of the person's immediate family, owns,

controls, or holds with the power to vote, or if any person other than a corporate officer or director of a person holds proxies representing 10% or more of the voting securities or authority of any other person, or if any person by contract or agreement is designated as an attorney-in-fact for a Lloyd's plan insurer under the Insurance Code, Chapter 941, or for a reciprocal or interinsurance exchange under the Insurance Code, Chapter 942. This presumption may be rebutted by a showing made in the manner provided by the Act, §823.005, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises directly or indirectly either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the policyholders of the insurer that the person be deemed to control the insurer.

(6) **Controlled insurer**--An insurer controlled directly or indirectly by a holding company (as a holding company is defined in this section).

(7) **Controlled person**--Any person, other than a controlled insurer, who is controlled directly or indirectly by a holding company (as a holding company is defined in this section).

(8) **Controlling producer**--An insurance broker or brokers or any person, firm, association or corporation domiciled, licensed, or operating in a state other than Texas, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than such person, firm, association or corporation, and who, directly or indirectly:

(A) controls or seeks to control a property and casualty insurer as the term control is defined in paragraph (5) of this subsection; and

(B) writes or places, in any calendar year, an aggregate amount of gross written premiums with such controlled property and casualty insurer which is equal to or greater than 5.0% of the admitted assets of such insurer as reported in such insurer's quarterly statement filed as of September 30th of the prior year. The term "producer" or "controlling producer" as used in these sections is not intended to include an agent or any independent agent acting on behalf of the controlled insurer, licensed pursuant to the Insurance Code, Chapter 21, Subchapter A, and any subagent or representative of the agent, who acts as such in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent is not also acting on behalf of an insured as set forth in this paragraph, in the transaction in question. The term "producer" or "controlling producer" as used in these sections is not intended to include an attorney-in-fact acting on behalf of a licensed Lloyd's or licensed reciprocal or interinsurance exchange.

(9) **Director**--A person elected or appointed as a member of a board of directors responsible for the management of an insurer. The term shall also include an attorney-in-fact of a Lloyd's or reciprocal or interinsurance exchange who is charged with responsibility for the management of an insurer.

(10) **Executive officer**--The chairman of the board of directors, the president, any vice-president of an applicant in charge of a principal business unit, division, or function (such as sales, administration, finance, or underwriting), any other officer who performs a policy-making function, or any other person who performs similar

policy-making functions for an applicant. Executive officers of subsidiaries may be deemed executive officers of an applicant if they perform such policy-making functions for an applicant.

(11) **Foreign insurer**--Includes an alien insurer.

(12) **Holding company**--Any person who directly or indirectly controls any insurer except that it shall not be deemed to include: the United States, a state or any political subdivision, agency or instrumentality thereof or any corporation which is wholly owned, directly or indirectly, by one or more of the foregoing.

(13) **Immediate family**--A person's spouse, father, mother, children, brothers, sisters, and grandchildren, the father, mother, brothers, and sisters of the person's spouse, and the spouse of the person's child, brother or sister, mother, father, or grandparent.

(14) **Insurance holding company system**--Consists of two or more affiliated persons, one or more of which is an insurer.

(15) **Insurer**--Includes all insurance companies organized or chartered under the laws of this state, commercially domiciled insurers, or insurers licensed to do business in this state, including capital stock companies, mutual companies, farm mutual insurance companies, title insurance companies, fraternal benefit societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual insurance companies, Lloyd's plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies and group hospital service companies, and any other entity which is made subject to the Insurance Code, Chapter 823 by applicable law, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(16) **Person**--An individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(17) **Security holder**--Of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing. The term "debt obligation" shall not include trade, commercial, or open accounts, matured claims, or agents' commissions.

(18) **Subsidiary**--Of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(19) **Ultimate controlling person**--That person which is not controlled by another person (as defined in this subsection).

(20) **Voting security**--Any security or other instrument giving or granting to the holder the power to vote at a meeting of shareholders of a person for or against the election of directors or any other matter involving the direction of the management and policies of such person, or any other security or instrument which the Texas Department of Insurance deems to be of similar nature including, but not limited to, those described in such rules and regulations as the Texas Department of Insurance may prescribe in the public interest as a voting security.

(b) **Exemption--Commercially Domiciled Insurer.**

(1) The commissioner may exempt from the provisions of the Insurance Code Chapter 823 and these sections, except the registration requirement, any commercially domiciled insurer if the commissioner determines that the insurer has assets physically located in

this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state. The exemption granted under this subsection shall set forth the specific criteria under which it is granted and shall be subject to annual review. The commissioner may, after notice and opportunity for hearing, rescind an exemption granted to a commercially domiciled insurer under the provisions of the Insurance Code Chapter 823 and these sections. A rescission of an exemption shall set forth the rationale for the rescission. Requests for an exemption under this subsection shall be filed with the Financial Analysis Division, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099. The request must contain a signed and notarized affidavit of an executive officer of the insurer that, should the exemption be granted, the insurer has agreed to notify the Financial Analysis Division within ten days after it no longer meets the criteria set out in this section on which the exemption is based. In determining that a commercially domiciled insurer has sufficient assets to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to policyholders of this state, the commissioner shall give consideration to the matters contacted in subparagraphs (A) - (D) of this paragraph in connection with an exemption requested under the Insurance Code §823.015, and these sections.

(A) Assets in Texas, which are either:

(i) permanent, free, and unencumbered and physically located in Texas in an amount equal to the total unpaid losses attributable to Texas risks; or

(ii) qualifying authorized investments under the Insurance Code comprising 20% of the insurer's admitted assets and physically located in Texas.

(B) Adequacy of policyholder surplus, based upon:

(i) an asset-to-liability ratio of two to one, if the insurer is a property and casualty insurer;

(ii) an asset-to-liability ratio of one and one-half to one, if the insurer is a life, accident and health insurer;

(iii) the insurer having capital and surplus equal to 250% of the minimum risk-based capital described in §7.402 of this chapter (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs); or

(iv) the insurer having total capital and surplus of at least \$50 million.

(C) Consideration may be given to financial conditions specified in §8.3 of this title (relating to Hazardous Conditions) to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state.

(D) Consideration may be given to other positive factors regarding an insurer's operations or conduct.

(2) The provisions of this subchapter shall not apply to a foreign or alien insurer if the commissioner has approved a total withdrawal plan from writing all lines of insurance for such insurer under the Insurance Code Chapter 827.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



## SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS

### 28 TAC §7.402

**STATUTORY AUTHORITY.** The amendments are adopted under the Insurance Code Chapters 404 and 441 and §§441.005, 441.051, 541.401, 822.210, 841.205, 884.206, 823.012, 843.404, 885.401, 982.105, 982.106, and 36.001. Chapters 404 and 441 address the duties of the Department when an insurer's solvency is impaired. Chapter 404 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies. Under §441.005, the Commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Section 441.051 specifies "the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency" and includes certain statutorily specified conditions, including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 541.401 authorizes the Commissioner to adopt reasonable rules necessary to accomplish the purposes of trade practices regulation in Chapter 541. Section 822.210, §841.205, and §884.206 authorize the Commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 823.012 authorizes the Commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.404 authorizes the Commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of health maintenance organizations for the protection of enrollees. Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the Commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the Department to use the annual report in determining a society's financial solvency. Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-6327

## 28 TAC §7.401

The Commissioner of Insurance adopts the repeal of §7.401, concerning the minimum risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs) for year-end 2006. The repeal is adopted without changes to the proposal published in the July 24, 2009, issue of the *Texas Register* (34 TexReg 4825).

**REASONED JUSTIFICATION.** The repeal of §7.401 is necessary because the due dates for filing the year-end 2006 risk-based capital reports and other filings required under the section have passed. Moreover, the Department is concurrently adopting amendments to §7.402 that prescribe year-end 2008 risk-based capital reports and required functions. Therefore, the need for this section no longer exists.

Simultaneously with the adoption of this repeal, the Department is adopting (i) the repeal of §11.809, concerning the risk-based capital requirements for health maintenance organizations (HMOs) and insurers filing the National Association of Insurance Commissioners (NAIC) Health Blank for year-end 2006, which is obsolete; and (ii) amendments to §7.202(b), concerning insurance holding company systems, and §7.402(d), concerning risk-based capital and surplus requirements for insurers and HMOs for year-end 2007. The adoption of the repeal of §11.809 and the adoption of amendments to §7.202(b) and §7.402(d) are also published in this issue of the *Texas Register*.

**HOW THE SECTIONS WILL FUNCTION.** The adoption of the repeal will result in the updating of the Texas Administrative Code with the removal of an obsolete section.

**SUMMARY OF COMMENTS.** The Department did not receive any comments on the proposed repeal.

**STATUTORY AUTHORITY.** The repeal is adopted pursuant to the Insurance Code Chapters 404 and 441 and §§441.051, 822.210, 841.205, 843.404, 884.206, 885.401, 982.105, 982.106, and 36.001. Chapters 404 and 441 address the duties of the Department when an insurer's solvency is impaired. Chapter 404 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies, and in §441.051 specifies "the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency" and includes certain statutorily specified conditions, including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Under §441.005, the Commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Sections 822.210, 841.205, and 884.206 authorize the Commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 843.404 authorizes the Commissioner

to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of health maintenance organizations for the protection of enrollees. Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the Commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the Department to use the annual report in determining a society's financial solvency. Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

### SUBCHAPTER I. FINANCIAL REQUIREMENTS

#### 28 TAC §11.809

The Commissioner of Insurance adopts the repeal of §11.809, concerning the risk-based capital requirements for health maintenance organizations (HMOs) and insurers filing the National Association of Insurance Commissioners (NAIC) Health Blank. The repeal is adopted without changes to the proposal published in the July 24, 2009, issue of the *Texas Register* (34 TexReg 4826).

**REASONED JUSTIFICATION.** The repeal of §11.809 is necessary because the Department is, simultaneously with this repeal, amending §7.402 to consolidate the risk-based capital requirements for all insurers and HMOs for year-end 2008 into §7.402. Specifically, §7.402, as amended, includes the risk-based capital requirements for insurers and HMOs filing the NAIC Health Blank requirements contained in existing §11.809. In addition, the need for §11.809 no longer exists because the sole purpose of §11.809 is to direct HMOs and insurers filing the NAIC Health Blank to comply with the requirements of §7.401. Section 7.401 specifies the risk-based capital and surplus requirements for all insurers and HMOs for year-end 2006, and is therefore obsolete and simultaneously repealed with the repeal of §11.809. Also, simultaneously with the repeal of §11.809 and §7.401, the De-

partment is adopting amendments to §7.202(b), addressing the procedures for exemption from the provisions of Insurance Code Chapter 823, stated in §823.015, pertaining to certain qualifying insurance holding company systems; and amendments to §7.402(d), concerning the risk-based capital and surplus requirements for all insurers and HMOs for year-end 2008. Insurers and health maintenance organizations will use the NAIC risk-based capital formulas to comply with the Department's regulatory requirements pertaining to minimum amounts of capital and policyholder surplus appropriate for carriers to support their overall business operations in consideration of their size and risk exposure. The NAIC formulas provide the insurance industry and the Department with a widely used regulatory standard for this purpose. The adoption of the repeal of §7.401 and the adoption of amendments to §7.202(b) and §7.402(d) are also published in this issue of the *Texas Register*.

**HOW THE SECTIONS WILL FUNCTION.** The adoption of the repeal will result in the updating of the Texas Administrative Code with the removal of an obsolete section.

**SUMMARY OF COMMENTS.** The Department did not receive any comments on the proposed repeal.

**STATUTORY AUTHORITY.** The repeal is adopted pursuant to the Insurance Code Chapters 404 and 441 and §§441.005, 441.051, 541.401, 822.210, 841.205, 884.206, 823.012, 843.404, 885.401, 982.105, 982.106, and 36.001. Chapters 404 and 441 address the duties of the Department when an insurer's solvency is impaired. Chapter 404 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies. Under §441.005, the Commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Section 441.051 specifies "the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency" and includes certain statutorily specified conditions, including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 541.401 authorizes the Commissioner to adopt reasonable rules necessary to accomplish the purposes of trade practices regulation in Chapter 541. Section 822.210, §841.205, and §884.206 authorize the Commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene C. Jarmon

General Counsel and Chief Clerk

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## PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

### CHAPTER 164. HAZARDOUS EMPLOYER PROGRAM

#### 28 TAC §§164.1 - 164.12, 164.14 - 164.18

The Commissioner of Workers' Compensation, Texas Department of Insurance, Division of Workers' Compensation (Division), adopts the repeal of 28 Texas Administrative Code §§164.1 - 164.12 and §§164.14 - 164.18, concerning the Hazardous Employer Program. This repeal is adopted without changes to the proposal as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4624) and will not be republished.

Under the Hazardous Employer Program, the Division's predecessor, the Texas Workers' Compensation Commission (TWCC), was required to identify employers as hazardous based on criteria established by the TWCC. The public employers identified as hazardous were required to develop accident prevention plans and the Division's predecessor, TWCC, was required to conduct follow-up inspections. Employers classified as hazardous were entitled to request a safety consultation from the TWCC. Each employer identified had the right to administrative review of the findings of the TWCC and to request a hearing to contest the findings of the TWCC.

The rules are adopted for repeal because the statutory authority for the rules, Labor Code Chapter 411, Subchapter D, was repealed by House Bill 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005.

The Division continues to provide other safety services such as safety training and educational materials, United States Department of Labor Occupational Safety and Health Administration compliance consultations, Resource Center Library, Safety Violations Hotline, data collection and analysis, and inspections of workers' compensation insurance carriers' loss control activities, pursuant to Labor Code Chapter 411.

The adoption of the repeal will remove outdated and inapplicable state requirements. Resources for improving and maintaining safe work conditions are and will continue to be provided through the Division through federally and state funded workplace safety programs.

**COMMENT:** One commenter stated that they support the proposed repeal.

**RESPONSE:** The Division appreciates the support.

For without changes: Insurance Council of Texas

Against: None

The repeal is adopted pursuant to Labor Code §402.00111 and §402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of Workers' Compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

No other code, statute or article is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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Proposal publication date: July 10, 2009

For further information, please call: (512) 804-4703



## CHAPTER 169. WORKERS' HEALTH AND SAFETY--DRUG-FREE WORKPLACE PROGRAM

### 28 TAC §169.1, §169.2

The Commissioner of Workers' Compensation, Texas Department of Insurance, Division of Workers' Compensation (Division), adopts the repeal of 28 Texas Administrative Code §169.1 and §169.2, concerning Workers' Health and Safety--Drug Free Workplace Program. This repeal is adopted without changes to the proposal as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4625) and will not be republished.

Under the Drug Free Workplace Program in §169.1, employers who had 15 or more employees and who maintained workers' compensation insurance coverage were required to adopt a policy for the elimination of drug abuse. Employers were required to provide their employees with a copy of the policy and provide a copy to the Division's predecessor, the Texas Workers' Compensation Commission, upon request.

The employer's policy was required to contain a statement that the policy included alcoholic beverages, inhalants and illegal drugs, a statement of the consequences of violation, a description of available treatment programs and a description of drug testing programs that the employer had in force.

The repeal of §169.1 and §169.2 is necessary because the statutory authority for the rules, Labor Code Chapter 411, Subchapter G, was repealed by House Bill 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005.

The Division continues to provide other safety services such as safety training and educational materials, United States Department of Labor Occupational Safety and Health Administration compliance consultations, Resource Center Library, Safety Violations Hotline, data collection and analysis, and inspections of workers' compensation insurance carriers' loss control activities, pursuant to Labor Code Chapter 411.

The adoption of the repeal will result in removing outdated and inapplicable state requirements. Resources for improving and maintaining safe work conditions are and will continue to be provided through the Division through federally and state funded workplace safety programs.

COMMENT: One commenter stated that they support the proposed repeal.

RESPONSE: The Division appreciates the support.

For without changes: Insurance Council of Texas

Against: None

The repeal is adopted pursuant to Labor Code §402.00111 and §402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of Workers' Compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

No other code, statute or article is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 2009.

TRD-200904554

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4703



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§305.42, 305.45, 305.50, 305.64 - 305.66, 305.69, 305.144, 305.150, 305.172, 305.175, 305.571, and 305.572; and adopts new §§305.650 - 305.661. All sections are adopted *without changes* to the proposed text as published in the May 22, 2009, issue of the *Texas Register* (34 TexReg 3164) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations periodically to meet the changing federal regulations.



Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, October 18, 1999, September 11, 2000 and June 14, 2005 (Clusters III - X). A RCRA authorization rule package for parts of RCRA Rule Clusters XI - XV was submitted to EPA Region VI on July 25, 2007. Texas is currently waiting on authorization of these clusters. (A cluster is a grouping of federal RCRA amendments during a one-year period.)

The commission adopts in this rule package parts of RCRA Rule Clusters XV, XVI, XVII and XVIII that implement revisions to the federal hazardous waste program which were made by EPA between July 1, 2005 and June 30, 2008. Both mandatory and optional federal rule changes in these clusters are proposed to be adopted. Adoption of two of the federal rule changes is mandatory in order to maintain RCRA authorization. EPA also recommends that the optional federal rule changes be incorporated into the state rules, but are not necessary in order to maintain authorization. Establishing equivalency with federal regulations will enable the State of Texas to operate all aspects of the federal hazardous waste program in lieu of the EPA. All adopted rule changes are discussed below in the SECTION BY SECTION DISCUSSION.

The Hazardous Waste Combustion Maximum Achievable Control Technology (MACT) regulations are multi-media at the federal and state level, affecting both air quality and hazardous waste management. The TCEQ has already adopted certain parts of 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE (i.e., the Hazardous Waste Combustion MACT rules) prior to this adopted rulemaking under air quality regulations at 30 TAC Chapter 113. The purpose of this adopted rulemaking is to adopt other parts of the federal combustion MACT program in 40 CFR Parts 264 - 266 and 270. This adopted rulemaking would incorporate those aspects of the combustion MACT rules that affect hazardous waste management as part of the changes to 30 TAC Chapters 305 and 335.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.

#### SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout the adopted rulemaking to reflect the agency's current practices and to conform to Texas Register and agency guidelines. These changes include updating references to Texas State Agencies, updating cross-references, and correcting typographical, spelling, and grammatical errors.

##### *§305.42, Application Required*

The commission adopts the amendment to §305.42 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 *Federal Register* (FR) 53420). This amendment incorporates application requirements for a standard permit. Specifically, this amendment incorporates the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on site in tanks, containers, and containment buildings. To be eligible for a standard permit, facilities must manage

hazardous waste on site in tanks, container storage areas, or containment buildings. Standardizing this aspect of the permitting process reduces the amount of agency technical review and processing time required by the traditional RCRA permit process. In addition, the standard permit streamlines the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protection as individual permits. For a proposed facility, an applicant may submit a standard permit application in lieu of a Part B application for those units that qualify for a standard permit. If additional hazardous waste units that do not qualify for a standard permit are to be permitted at the same facility, a Part B application must be submitted. A permittee may choose to apply for a standard permit in lieu of submitting a Part B permit renewal application for a tank, container storage area, or containment building. If the current authorization also contains other hazardous waste management units not eligible for a standard permit, a Part B permit renewal application must be submitted for those units. A contested case hearing for a standard permit may be requested by the executive director, applicant, or Office of the Public Interest Counsel. The term limit for a standard permit is ten years. Because facility storage units must meet the same technical standards as units permitted under a traditional permit, the adopted amendment is more flexible but equivalent to the current state rules.

##### *§305.45, Contents of Application for Permit*

The commission adopts an amendment to §305.45(a)(6) to update language to an existing requirement that specifies that documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer and/or Texas licensed professional geoscientist. This revised language replaces outdated language adopted from 40 CFR Part 264 previously that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer and/or Texas licensed professional geoscientist."

##### *§305.50, Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order*

The commission adopts an amendment to §305.50 to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment incorporates final national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combustors. These standards implement Section 112(d) of the Federal Clean Air Act by requiring hazardous waste combustors to meet hazardous air pollutants (HAP) emission standards reflecting the performance of the MACT. The adopted amendment allows the executive director to request additional information to assess the protectiveness of any facility subject to MACT EEE. This adopted amendment also allows the executive director to add additional requirements, including lowering emission limits, if in response to the information requested, it is necessary to protect human health and the environment.

The commission adopts the amendment to §305.50(a)(4)(F), (6), and (7) to update current language that would clarify the existing requirement that specific documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer. This revised language replaces outdated language adopted from 40 CFR previously that states that documents must be signed and sealed by a "registered professional

engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer."

The commission also adopts an amendment to §305.50 to conform to federal regulations promulgated in the July 14, 2006 issue of the *Federal Register* (71 FR 40254). This amendment incorporates by reference corrections to typographical errors found in 40 CFR §§270.13 - 270.27. This amendment does not create new regulatory requirements.

#### *§305.64, Transfer of Permits*

The commission adopts an amendment to §305.64 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 FR 53420). This amendment incorporates application requirements for transfer of a standard permit.

#### *§305.65, Renewal*

The commission adopts an amendment to §305.65 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 FR 53420). This amendment incorporates application requirements for renewal of a standard permit. Specifically, this amendment provides for when a permit is subject to renewal, the permittee may file a standard permit application instead of a renewal application for those units eligible for a standard permit. The permittee must file a renewal application for all remaining permitted units. The renewal of a standard permit will follow the same processes as a permit in §305.65.

#### *§305.66, Permit Denial, Suspension, and Revocation*

The commission adopts an amendment to §305.66 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 FR 53420). This amendment incorporates permit denial, suspension, and revocation requirements for a standard permit. Specifically, this adopted amendment adds to the list for good cause to deny, suspend, or revoke a permit or order if the executive director has received notification of intent to obtain a standard permit.

#### *§305.69, Solid Waste Permit Modification at the Request of the Permittee*

The commission adopts an amendment to §305.69(l)(10) to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment incorporates Part B permit modification requirements that allow facility owners or operators to request that specific RCRA operating and emissions limits be waived by submitting a Class 1 permit modification request for combustion facility changes. Specifically, the amendment waives RCRA operating and emissions limits in the Part B permit if they are included in the MACT provisions of an air quality permit. The operating and emissions limits are waived through modification of the Part B permit.

#### *§305.144, Certification and Inspection*

The commission adopts an amendment to §305.144 to update current language that would clarify the existing requirement that specific documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer. This revised language replaces outdated language adopted from 40 CFR previously that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer."

#### *§305.150, Incorporation of References*

The commission adopts an amendment to §305.150 to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment incorporates final NESHAP for hazardous waste combustors. These standards implement Section 112(d) of the Federal Clean Air Act by requiring hazardous waste combustors to meet HAP emission standards reflecting the performance of the MACT.

#### *§305.172, Determining Feasibility of Compliance and Adequate Operating Conditions*

The commission adopts an amendment to §305.172 to conform to federal regulations promulgated in the June 14, 2005 issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005 issue of the *Federal Register* (70 FR 44150). This amendment revises §305.172(2)(A)(iii) and (iv) to remove the requirement to use, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846" and replace it with "appropriate analytical techniques" in the case of §305.172(2)(A)(iii) and "appropriate analytical methods" in the case of §305.172(2)(A)(iv). This amendment eliminates the requirement that facility owners and operators use SW-846 methods, but does not eliminate the requirement that facility owners and operators receive prior approval for specific analytical methods from the executive director through approval of a sampling and analysis plan.

#### *§305.175, Conditional Exemption for Demonstrating Compliance with Certain Air Standards*

The commission adopts an amendment to §305.175 to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment adds language that specifies information requirements for Part B of the application for a hazardous waste permit found in 40 CFR §270.19 for air emission controls for incinerators. Specifically this amendment incorporates Part B permit requirements that allow facility owners or operators of incinerators to request that specific RCRA operating and emissions limits be waived from the permit. The rule change would waive RCRA operating and emissions limits in the Part B permit if they are included in the MACT provisions of an air quality permit.

#### *§305.571, Applicability*

The commission adopts an amendment to §305.571(b) to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment adds language that specifies information requirements for Part B of the application for a hazardous waste permit found in 40 CFR §270.22 for air emission controls for cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, or hydrochloric acid production furnaces burning hazardous waste. Specifically, this amendment incorporates Part B permit requirements that would allow facility owners or operators of boilers and industrial furnaces to request specific RCRA operating and emissions limits be waived from the permit. The rule change waives RCRA operating and emissions limits in the Part B permit if they are included in the MACT provisions of an air quality permit.

#### *§305.572, Permit and Trial Burn Requirements*

The commission adopts an amendment to §305.572(a) to conform to federal regulations promulgated in the June 14, 2005 issue of the *Federal Register* (70 FR 34538) as amended in the August 1, 2005 issue of the *Federal Register* (70 FR 44150). This amendment allows those seeking permits or amendments

to permits for boilers and industrial furnaces in which hazardous waste is burned to conduct trial burns using "appropriate analytical techniques" and "appropriate analytical methods" instead of SW-846 methods.

The commission also adopts an amendment to §305.572(a)(6) to conform to federal regulations promulgated in the October 12, 2005 issue of the *Federal Register* (70 FR 59402). This amendment adopts by reference revisions to the options found in 40 CFR §270.235(a) and (b) for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces to minimize air emissions from startup, shutdown, and malfunction events. This amendment requires that incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces that become subject to RCRA permit requirements after October 12, 2005 control emissions of toxic compounds during startup, shutdown, and malfunction events.

*§§305.650 - 305.661, Subchapter R: Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units*

The commission adopts new sections §§305.650 - 305.661 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 FR 53420). These adopted new sections incorporate application requirements for a standard permit. A RCRA standard permit will be available to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on site in tanks, containers, and containment buildings. The standard permit will also be available to facilities which receive hazardous waste generated off site by a generator under the same ownership as the receiving facility, and which then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. Standardizing this aspect of the permitting process will reduce the amount of agency technical review and processing time required by the traditional RCRA permit process. In addition, the standard permit will streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protection as individual permits. For a proposed facility, an applicant may submit a standard permit application in lieu of a Part B application for those units that qualify for a standard permit. If additional hazardous waste units that do not qualify for a standard permit are to be permitted at the same facility, a Part B application must be submitted. If a permittee chooses to apply for a standard permit in lieu of submitting a Part B permit renewal application for a tank, container storage area, or containment building, a standard permit application must be submitted. If the current authorization also contains other hazardous waste management units not eligible for a standard permit, a Part B permit renewal application must be submitted for those units. A contested case hearing for a standard permit may be requested by the executive director, applicant, or Office of the Public Interest Counsel. The term limit for a standard permit is ten years.

**FINAL REGULATORY IMPACT ANALYSIS DETERMINATION**

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute.

Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions under 42 United States Code (USC), §6926(g), which already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. Likewise, there is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because the regulated community benefits from the greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations.

Because the regulated community is already required to comply with the more stringent federal rules, the adopted equivalent state rules will not cause any adverse effects. There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

First, the rulemaking does not exceed a standard set by federal law because the commission adopts this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program.

Second, although the rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the rulemaking to maintain authorization of the state hazardous waste program.

And fourth, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission adopts this rulemaking under Texas Water Code, §5.103 and §5.105 and under Texas Health and Safety Code, §361.017 and §361.024.

The commission solicited comments on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

**TAKINGS IMPACT ASSESSMENT**

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 applies. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4).

The specific purpose of the rulemaking is to maintain state RCRA authorization by proposing state hazardous waste rules that are equivalent to the federal regulations. The rulemaking will substantially advance this purpose by adopting rules that incorporate and refer to the federal regulations.

Promulgation and enforcement of the rules will not be a statutory or constitutional taking of private real property. Specifically, the rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property; does not restrict or limit the owner's right to property; and does not reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations.

The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules will not burden, restrict, or limit the owner's right to property and will not reduce the value of property by 25% or more. Likewise, the regulated community is not unduly burdened by those revisions providing greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 *et seq.* Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the rulemaking will update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules do not violate any applicable provisions of the CMP's stated goals and policies.

The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

#### PUBLIC COMMENT

The commission held a public hearing on June 16, 2009. The comment period closed on June 22, 2009. No comments were received.

### SUBCHAPTER C. APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

#### 30 TAC §§305.42, 305.45, 305.50

##### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 2009.

TRD-200904556

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6090



### SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

#### 30 TAC §§305.64 - 305.66, 305.69

##### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
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For further information, please call: (512) 239-6090



## SUBCHAPTER G. ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS

### 30 TAC §305.144, §305.150

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
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For further information, please call: (512) 239-6090



## SUBCHAPTER I. HAZARDOUS WASTE INCINERATOR PERMITS

### 30 TAC §305.172, §305.175

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement Texas Health and Safety Code, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 239-6090



## SUBCHAPTER Q. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

### 30 TAC §305.571, §305.572

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
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## SUBCHAPTER R. RESOURCE CONSER- VATION AND RECOVERY ACT STANDARD PERMITS FOR STORAGE AND TREATMENT UNITS

### 30 TAC §§305.650 - 305.661

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 and §361.024, which authorize the commission to regulate industrial

solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted new sections implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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## CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§335.1, 335.2, 335.29, 335.31, 335.47, 335.69, 335.76, 335.112, 335.116, 335.118, 335.125, 335.152, 335.163 - 335.166, 335.173, 335.175, 335.221, 335.224, 335.261, 335.431, 335.504, 335.582 - 335.584, and 335.590 - 335.593; and adopts new §§335.601 and §335.602. All sections are adopted *without changes* to the proposed text as published in the May 22, 2009, issue of the *Texas Register* (34 TexReg 3189) and will not be republished.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations periodically to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under the RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, October 18, 1999, September 11, 2000 and June 14, 2005 (Clusters III - X). A RCRA authorization rule package

for parts of RCRA Rule Clusters XI - XV was submitted to EPA Region VI on July 25, 2007. Texas is currently waiting on authorization of these clusters. (A cluster is a grouping of federal RCRA amendments during a one-year period.)

The commission adopts in this rule package to adopt parts of RCRA Rule Clusters XIV, XV, XVI, XVII and XVIII that implement revisions to the federal hazardous waste program, which were made by EPA between July 1, 2005 and June 30, 2008. Both mandatory and optional federal rule changes in these clusters are proposed to be adopted. Adoption of two of the federal rule changes is mandatory in order to maintain RCRA authorization. Although not necessary in order to maintain authorization, EPA also recommends that the optional federal rule changes be incorporated into the state rules. Establishing equivalency with federal regulations will enable the State of Texas to operate all aspects of the federal hazardous waste program in lieu of the EPA. All adopted rule changes are discussed below in the SECTION BY SECTION DISCUSSION.

The Hazardous Waste Combustion Maximum Achievable Control Technology (MACT) regulations are multi-media at the federal and state level, affecting both air quality and hazardous waste management. The TCEQ has already adopted certain parts of 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE (i.e., the Hazardous Waste Combustion MACT rules) prior to this rulemaking under air quality regulations at 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants. The purpose of this adopted rulemaking is to adopt other parts of the federal combustion MACT program, which are encoded at 40 CFR Parts 264 - 266, and 270. This adopted rulemaking would incorporate those aspects of the combustion MACT rules affecting waste management as part of the changes to 30 TAC Chapters 305 and 335.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 305, Consolidated Permits.

### SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout the adopted rulemaking to reflect the agency's current practices and to conform to Texas Register and agency guidelines. These changes include updating references to Texas State Agencies, updating cross-references, and correcting typographical, spelling, and grammatical errors.

#### §335.1, Definitions

The commission adopts an amendment to §335.1 to conform to federal regulations promulgated in the July 28, 2006, issue of the *Federal Register* (71 FR 42928). Specifically, this amendment adds the definitions of "cathode ray tube or CRT," "CRT collector," "CRT glass manufacturer," and "CRT processing" to the list of definitions. Subsequent paragraphs have been renumbered accordingly.

The commission also adopts an amendment to §335.1 to conform to federal regulations promulgated in the January 2, 2008, issue of the *Federal Register* (73 FR 57). Specifically, this amendment adds the definition of "gasification" to the list of definitions.

The commission also adopts an amendment to §335.1(133)(A)(iv) to conform to regulations promulgated in the April 4, 2006 issue of the *Federal Register* (71 FR 16862). This amendment reduces the paperwork burden for generators

that exclude wood preserving wastewaters and spent wood preserving solutions from the definition of solid waste by no longer requiring a one-time notification stating that the plant intends to claim the exclusion. The generator is required to maintain a copy of the notification in the on-site records for the life of the facility.

The commission also adopts an amendment to §335.1(133)(A)(iv) to conform to federal regulations promulgated in the July 28, 2006 issue of the *Federal Register* (71 FR 42928). This amendment excludes CRTs that meet the requirements in 40 CFR §261.4(a)(22) for reuse and recycling from classification as a solid waste. This exclusion is currently found in 40 CFR §261.4.

The commission also adopts a definition for "standard permit" in §335.1(145) to conform to federal regulations promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). Specifically, this amendment incorporates the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings. To be eligible for a standard permit, facilities must manage hazardous waste on-site in tanks, container storage areas, or containment buildings. Standardizing this aspect of the permitting process reduces the amount of agency technical review and processing time required by the traditional RCRA permit process. In addition, the standard permit streamlines the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protection as individual permits. For a proposed facility, an applicant may submit a standard permit application in lieu of a Part B application for those units that qualify for a standard permit. If additional hazardous waste units that do not qualify for a standard permit are to be permitted at the same facility, a Part B application must be submitted. If a permittee chooses to apply for a standard permit in lieu of submitting a Part B permit renewal application for a tank, container storage area, or containment building, a standard permit application must be submitted. If the current authorization also contains other hazardous waste management units not eligible for a standard permit, a Part B permit renewal application must be submitted for those units. A contested case hearing for a standard permit may be requested by the executive director, applicant, or Office of the Public Interest Counsel. The term limit for a standard permit is ten years.

#### §335.2, *Permit Required*

The commission adopts new language at §335.2(o) to conform to federal regulations promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). This amendment incorporates application requirements for a standard permit. Specifically, this amendment incorporates the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings.

The commission adopts an amendment to §335.2(h)(8) to correct cross-referenced citations to sections in 30 TAC Chapter 330, Municipal Solid Waste, due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission adopts an amendment to §335.2(h)(8) to replace the reference of §330.136(b)(6)(B) - (E) with §330.171(c)(3)(B) - (E).

#### §335.29, *Adoption of Appendices by Reference*

The commission adopts an amendment to §335.29(1) to conform to federal regulations promulgated in the June 14, 2005 issue of the *Federal Register* (70 FR 34538) and amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment adopts by reference deletion of the requirement to use "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846." This amendment eliminates the requirement that facility owners and operators use SW-846 sampling methods but does not eliminate the requirement that facility owners and operators receive prior approval for specific sampling methods from the executive director through approval of a sampling and analysis plan. Facility owners and operators may propose appropriate methods in their sampling and analysis plan.

The commission also adopts an amendment to §335.29(3) and (4) to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment adopts by reference corrections to errors made in the CFR.

#### §335.31, *Incorporation of References*

The commission adopts an amendment to §335.31 to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment incorporates by reference revisions to references found in 40 CFR §260.11. Specifically, this amendment updates a number of American Society for Testing and Materials (ASTM) and SW-846 analytical methods to reflect the most recent available analytical methods.

The commission adopts an amendment to §335.31 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 FR 53420). Specifically, this amendment incorporates the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings. Because portions of the rule may be affected by more than one federal rule change, only the latest *Federal Register* citation appears in the rule text.

#### §335.47, *Special Requirements for Persons Eligible for a Federal Permit by Rule*

The commission adopts an amendment to §335.47(c) to update language that clarifies an existing requirement that specific documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer and/or Texas licensed professional geoscientist. This revised language replaces outdated language adopted from 40 CFR Part 264 previously that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer and/or Texas licensed professional geoscientist."

#### §335.69, *Accumulation Time*

The commission adopts an amendment to §335.69(a) and (m) to correct typographical errors that were made to referenced citations. Amendments to §335.69(a) and (m) were adopted in a previous rulemaking, and the corrections are required by EPA to maintain authorization.

#### §335.76, *Additional Requirements Applicable to International Shipments*

The commission adopts an amendment to §335.76(a) and (h) to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment incorporates by reference corrections to errors in the CFR.

#### §335.112, *Standards*

The commission adopts an amendment to §335.112(a)(1), (3), (6), (8) - (13), (16), (18) - (20), and (22) to conform to federal regulations promulgated through the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment incorporates by reference corrections to errors made in the CFR. As indicated below some of these sections are impacted by other federal rule changes. The latest *Federal Register* citation appears in the adopted text.

The commission adopts an amendment to §335.112(a)(1), (4) - (6), (8) - (11), (13), (18), (20), and (22) to conform to federal regulations promulgated in the April 4, 2006 issue of the *Federal Register* (71 FR 16862). This amendment adopts by reference requirements that reduce the recordkeeping and reporting burden imposed on the regulated community by ensuring that only the information needed and used to implement the hazardous waste program is collected from facilities.

The commission adopts an amendment to §335.112(a)(1) to clarify that emergency response training for facility personnel required by safety regulations can fulfill the requirements of this section.

The commission adopts an amendment to §335.112(a)(4) to revise the default retention time for manifests and other records from 'until closure' to three years, unless otherwise specified. Records of wastes received, the location and quantity of all hazardous wastes placed in disposal cells, groundwater monitoring, and response action plans continue to be required to be kept until closure. Closure and post-closure cost estimates, along with monitoring and analytical data are required to be kept until closure.

The commission adopts an amendment to §335.112(a)(5) to no longer require the submission of groundwater quality assessment plans, but to maintain them in the facility operating file until closure of the site.

The commission adopts an amendment to §335.112(a)(6) to require only annual instead of semi-annual submission of corrective action progress reports to address equipment leaks.

The commission adopts an amendment to §335.112(a)(9) to incorporate federally promulgated amendments to 40 CFR §§265.191 - 265.193, and 265.196. The adopted amendments remove outdated language that includes requirements to install secondary containment for tanks by 1989 and replace them with requirements to install secondary containment on existing hazardous waste storage tanks, which have been in service more than 15 years.

The commission adopts an amendment to §335.112(a)(10) to clarify that liner and leachate management requirements apply to all new surface impoundments, and to delete outdated language that specifically references 'new' units constructed after 1992. The adopted amendment also removes the requirement to submit an excessive leakage rate response action plan; instead facilities are allowed to keep the plan on-site until closure.

The commission adopts an amendment to §335.112(a)(11) to remove the requirement to submit an excessive leakage rate re-

sponse action plan; instead facilities would be allowed to keep the plan on-site until closure.

The commission adopts an amendment to §335.112(a)(13) to clarify that liner and leachate management requirements apply to all new landfills, and to delete outdated language that specifically references 'new' units constructed after 1992. The adopted amendment also removes the requirement to submit an excessive leakage rate response action plan; instead facilities are allowed to keep the plan on-site until closure.

The commission adopts an amendment to §335.112(a)(20) to remove requirements to notify the executive director if a facility chooses to follow alternative management standards.

The commission adopts an amendment to §335.112(a)(22) to remove outdated language that includes an option to notify the executive director prior to 1993 and recordkeeping requirements with 1993 action dates.

The commission adopts revised language in §335.112(b)(4)(M) to the existing requirement that clarifies that specific documents submitted must be signed and sealed by a Texas licensed professional engineer. This added language replaces outdated language. The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer," as required by the Texas Engineering Practice Act.

#### §335.116, *Applicability of Groundwater Monitoring Requirements*

The commission adopts an amendment to §335.116(d) to update language clarifying the existing requirement that specific documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer and/or Texas licensed professional geoscientist. This revised language replaces outdated language adopted from 40 CFR previously that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer and/or Texas licensed professional geoscientist."

The commission adopts an amendment to §335.116(d)(1) and (3) to conform to federal regulations promulgated in the April 4, 2006 issue of the *Federal Register* (71 FR 16862). This amendment adopts by reference requirements that reduce the recordkeeping and reporting burden imposed on the regulated community by ensuring that only the information needed and used to implement the hazardous waste program is collected from facilities. Specifically, this amendment no longer requires submission of annual groundwater monitoring plans and reports under paragraphs (1) and (3), respectively, to the executive director for interim status hazardous waste units. Rather, the adopted amendment requires facilities to maintain these documents in the facility's operating record until closure of the facility.

#### §335.118, *Closure Plan; Submission and Approval of Plan*

The commission adopts an amendment to §335.118 to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment adopts corrections to errors made in the CFR.

#### §335.125, *Special Requirements for Bulk and Containerized Waste*

The commission adopts an amendment to §335.125 to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the Au-



gust 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment incorporates changes made in 40 CFR §265.314(d) which replaces Method 9095 with Method 9095B.

The commission also adopts an amendment to §335.125(a) - (f) to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment updates language adopted from the CFR. Specifically, the adopted amendment removes subsection (a) which describes bulk and containerized landfill options available prior to 1985, renumbers remaining subsections as (a) - (f), and updates them to describe the post-1985 requirements as the only options currently available.

#### §335.152, *Standards*

The commission also adopts an amendment to §335.152(a)(1), (5), (7), (8), (10) - (12), and (14) - (20) to conform to federal regulations promulgated through the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment adopts by reference corrections to errors made in the CFR. As indicated further some of these sections are impacted by other federal rule changes. The latest *Federal Register* citation appears in the adopted text.

The commission adopts an amendment to §335.152(a)(3), (4), and (6) to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment adopts by reference changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment streamlines the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained.

The commission adopts an amendment to §335.152(a)(8), (9), and (17) - (21) to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). Specifically, this amendment adopts by reference updates to a number of ASTM and SW-846 analytical methods to reflect the most recent available analytical methods.

The commission adopts an amendment to §335.152(a)(13) to conform to federal regulations promulgated in the April 8, 2008 issue of the *Federal Register* (73 FR 18970). This amendment revises several compliance and monitoring provisions to simplify the monitoring requirements for sources that select mercury or semi-volatile metal feed rate limits averaged over periods greater than 12 hours, clarifies compliance requirements for data to demonstrate compliance with the feed rate limits of up to a 12-hour rolling average, and corrects the compliance requirements for Notice of Intent To Comply for new units.

The commission adopts §335.152(c)(11) to update language to the existing requirement that specific documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer and/or Texas licensed professional geoscientist. This added language replaces language adopted by reference that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer" as required by the Texas Engineering Practice Act.

#### §335.163, *General Groundwater Monitoring Requirements*

The commission also adopts an amendment to §335.163 to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment adopts corrections to errors made in the CFR.

#### §335.164, *Detection Monitoring Program*

The commission adopts an amendment to §335.164 to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment adopts changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment streamlines the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. Specifically, this amendment eliminates the requirement that a sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during detection monitoring. This amendment also eliminates the requirement to immediately sample the groundwater in all monitoring wells that exhibit statistically significant evidence of contamination and determine whether constituents in the list of Appendix IX of 40 CFR Part 264 are present. Instead, the executive director may allow sampling for a site-specific subset of constituents from the Appendix IX list. In addition, the owner or operator may resample within one month or an alternative site-specific schedule approved by the executive director and repeat the analysis for those compounds detected. This adopted amendment is more flexible than the current state rules but is protective of human health and the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

#### §335.165, *Compliance Monitoring Program*

The commission adopts an amendment to §335.165 to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 40254). This amendment adopts changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment streamlines the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. Specifically, this amendment eliminates the requirement that the owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in 40 CFR Part 264, Appendix IX at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and if so, at what concentration. Instead, the owner or operator may consult with the executive director to determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and the specific constituents from 40 CFR Part 264, Appendix IX for which these samples must be analyzed.

#### §335.166, *Corrective Action Program*

The commission adopts an amendment to §335.166 to conform to federal regulations promulgated in the April 4, 2006, issue of

the *Federal Register* (71 FR 16862). This amendment adopts changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment streamlines the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. Specifically, the adopted amendment revises the requirement that owners or operators report in writing to the executive director on the effectiveness of their corrective action program from semiannually to annually.

#### *§335.173, Design and Operating Requirements (Landfills)*

The commission adopts an amendment to §335.173 to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 16862). This amendment adopts by reference corrections to errors made in the CFR.

#### *§335.175, Special Requirements for Bulk and Containerized Waste*

The commission adopts an amendment to §335.175(a) to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 16862). This amendment adopts by reference corrections to errors made in the CFR.

The commission also adopts an amendment to §335.175(c) to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment adopts by reference revisions to analytical test methods and procedures and would replace "Test Method 9095" with "Test Method 9095B."

#### *§335.221, Applicability and Standards*

The commission adopts an amendment to §335.221(a)(1), (6), (8), (10), (11), (14), (17), and (20) to conform to federal regulations promulgated through the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment adopts by reference corrections to errors made in the CFR. As indicated further several sections are impacted by another federal rule change. The latest *Federal Register* citation appears in the adopted text.

The commission adopts an amendment to §335.221(a), (a)(1), (17), and (23), to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). The amendment adopts by reference updated revisions in analytical test methods, methodology, and procedures.

The commission also adopts an amendment to §335.221 to conform to federal regulations promulgated in the October 12, 2005, issue of the *Federal Register* (70 FR 59402). This amendment incorporates final National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste combustors. These standards implement Clean Air Act Section 112(d) by requiring hazardous waste combustors to meet hazardous air pollutants emission standards reflecting the performance of the MACT.

The commission adopts an amendment to §335.221(a) to conform to federal regulations promulgated in the April 8, 2008, issue of the *Federal Register* (73 FR 18970). This amendment adopts by reference relettering of subparagraphs.

The commission also adopts an amendment to §335.221(a)(6) and (14) to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment adopts changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment streamlines the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. Specifically, the adopted amendment would revise the requirement that owners or operators retain records at their facility until closure to being required to retain records at their facility for five years.

#### *§335.224, Additional Interim Status Standards for Burners*

The commission adopts an amendment to §335.224(11) to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment adopts changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment streamlines the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. Specifically, when owners or operators conduct interim status compliance testing for burners, the adopted amendment revises the requirement that owners and operators submit to the executive director a recertification of compliance within three years from submitting the previous certification or recertification, to submitting the recertification of compliance within five years.

#### *§335.261, Universal Waste Rule*

The commission adopts an amendment to §335.261 to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment adopts by reference corrections to errors made in the CFR.

#### *§335.431, Purpose, Scope, and Applicability*

The commission adopts an amendment to §335.431 to conform to federal regulations promulgated through the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment adopts by reference updated revisions in analytical test methods.

The commission also adopts an amendment to §335.431 to conform to federal regulations promulgated in the April 22, 2004, issue of the *Federal Register* (69 FR 21737), and October 25, 2004, issue of the *Federal Register* (69 FR 62217). The adopted amendment provides hazardous waste generators the option of determining if a hazardous waste must be treated while they classify the waste, and the option to send the waste to a permitted treatment facility that must determine if treatment is required.

#### *§335.504, Hazardous Waste Determination*

The commission adopts an amendment to §335.504(1) - (3). The commission adopts an amendment to §335.504(1) to conform to federal regulations promulgated in the February 24, 2005 (70 FR 9138), June 14, 2005 (70 FR 34538), August 1, 2005 (70 FR 44150), June 16, 2005 (70 FR 35032), October 4, 2005 (70 FR 57769), July 28, 2006 (71 FR 42928), January 2, 2008 (73 FR 57), and June 4, 2008 (73 FR 31756) issues of the *Federal*

*Register*. The amendment incorporates by reference revisions to both the definitions of "solid waste" and "hazardous waste." In the adopted rule text, only the latest *Federal Register* citation appears.

Specifically, the amendment to the definition of a "Solid waste" conditionally excludes cathode ray tubes that are recycled; expands the exclusion from the definition of a solid waste for oil-bearing hazardous secondary materials generated at a petroleum refinery including adding "gasification" to the list of recognized petroleum refinery processes; and removes the requirement to use analytical methods from SW-846, Third Edition in 40 CFR §261.3(a)(2)(v).

In addition, the amendment to the definition of hazardous waste incorporates by reference: revisions to the wastewater treatment exemption for hazardous waste mixtures (i.e., the "headworks exemptions") found in 40 CFR §261.3(a)(2)(iv) that expands the scope of the exemption and makes corrections to a previous amendment that added K-181 to the list of hazardous wastes under 40 CFR §261.32. The portion of the amendment that expands the scope of the headwater exemptions specifically adds benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewaters are exempted from the definition of hazardous waste. To qualify for the exemption, the concentrations of benzene and 2-ethoxyethanol in wastewater must be at levels protective of human health and the environment. The portion of the amendment that makes corrections to the K-181 listing are nontechnical administrative corrections only and are required by EPA to maintain authorization.

In addition, the commission adopts an amendment to §335.504(2) to conform to federal regulations promulgated in the June 14, 2004, issue of the *Federal Register* (70 FR 34538), as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150), and June 4, 2008, issue of the *Federal Register* (73 FR 31756). This amendment incorporates by reference the revisions to 40 CFR §261.31 which amends the definition of F-019 wastes to exclude from the definition of hazardous waste certain wastewater treatment sludges from the manufacturing of motor vehicles; the replacement of references to SW-836, Method 8290 with "by using an appropriate method;" and a revised definition to the term "not detected" as found in 40 CFR §261.35(b)(2)(iii)(B). The F-019 exclusion will only apply if the waste is disposed in a landfill unit subject to certain liner requirements.

The commission also adopts an amendment to §335.504(3) to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34528) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment adopts by reference updated revisions in analytical test methods.

#### §335.582, *Prohibited Wastes*

The commission adopts an amendment to §335.582 to correct cross-referenced citations to sections in Chapter 330, due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. Specifically, the commission adopts an amendment to §335.582(1) to reference the correct citation for the definition of "Municipal solid waste" as defined in §330.3. The commission adopts an amendment to §335.582(4) to reference the correct citation for the definition of "Putrescible waste" as defined in §330.3. The commission also adopts an amendment to §335.582(4) to replace the reference of §330.126 with §330.151. The commission also adopts an amendment to §335.582(4) to

replace the reference of §330.300 with §330.545. The commission adopts an amendment to §335.582(7) to reference the correct citation for the definition of "Medical waste" as defined in §330.3. The commission adopts an amendment to §335.582(8) to reference the correct citation for the definition of "Liquid waste" as defined in §330.3. The commission adopts an amendment to §335.582(9) to replace the reference of §330.5(e)(1) - (5) with §330.15(e)(1) - (5). The commission adopts an amendment to §335.582(10) to replace the reference of §330.136(b)(3) and (4) with §330.171(c)(3) and (4). This amendment is as stringent as the current state rules. This amendment is not required to maintain authorization.

#### §335.583, *Permit Procedures*

The commission adopts an amendment to §335.583 to correct cross-referenced citations to sections in Chapter 330 because all sections of Chapter 330 have been reorganized and amended in a previous rulemaking. Specifically, the commission adopts an amendment to §335.583(a)(1) to replace §330.50 with §330.53. The commission also adopts an amendment to §335.583(a)(2) to replace §330.51 with §330.57. The commission also adopts an amendment to §335.583(a)(2) to add "and Registration" after "Permit" in the paragraph. The commission additionally adopts an amendment to §335.583(a)(2) to replace "Application" with "Applications" in the paragraph. The commission furthermore adopts an amendment to §335.583(a)(2) to replace "Facility" with "Facilities" in the paragraph. The commission adopts an amendment to §335.583(a)(3) to replace §330.52 with §330.59. The commission also adopts an amendment to §335.583(a)(3) to replace "Technical Requirements" with "Contents" in the paragraph. The commission additionally adopts an amendment to §335.583(a)(3) to replace §330.52(b)(11) with §330.63(j). The commission furthermore adopts an amendment to §335.583(a)(3) to replace "financial assurance" with "cost estimate for closure and post-closure care." The commission adopts an amendment to §335.583(a)(4) to replace §330.53 with §330.61. The commission also adopts an amendment to §335.583(a)(4) to replace "Technical Requirements" with "Contents" in the paragraph. The commission adopts an amendment to §335.583(a)(5) to replace "§330.54" with §330.63. The commission also adopts an amendment to §335.583(a)(5) to replace "Technical Requirements" with "Contents" in the paragraph. The commission additionally adopts an amendment to §335.583(a)(5) to replace §330.54(3) with §330.61(b)(1)(A). The commission adopts deletion of §335.583(a)(6). §335.583(a)(5), and addresses the requirements in the current §335.583(a)(6). The commission adopts the deletion of §335.583(a)(7), §335.583(a)(5), addresses the requirements in the current §335.583(a)(7). The commission adopts renumbering of §335.583(a)(8) as §335.583(a)(6). The commission also adopts an amendment to §335.583(a)(8) (renumbered as §335.583(a)(6)) to replace §330.57 with §330.65. The commission additionally adopts an amendment to §335.583(a)(8) (renumbered as §335.583(a)(6)) to replace "Technical Requirements" with "Contents" in the paragraph. The commission adopts deletion of §335.583(a)(9) and replaces it with §335.583(a)(7). The commission adopts an amendment to §335.583(a)(7) to replace §330.58 with §330.219(a). The commission adopts renumbering of §335.583(a)(10) as §335.583(a)(8) and also replaces §330.62 with §330.67. The commission adopts renumbering of §335.583(a)(11) as §335.583(a)(9) and also replaces §330.64 with §330.73. The commission additionally adopts §335.583(a)(9) to add "and Registration" after "Permit" in the paragraph.

#### *§335.584, Location Restrictions*

The commission adopts an amendment to §335.584 to correct cross-referenced citations to sections in Chapter 330 due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission adopts an amendment to §335.584(a)(1) to replace §330.301 with §330.547. The commission adopts an amendment to §335.584(a)(2) to replace §330.302 with §330.553. The commission adopts an amendment to §335.584(a)(3) to replace §330.303 with §330.555. The commission adopts an amendment to §335.584(a)(4) to replace §330.304 with §330.557. The commission adopts an amendment to §335.584(a)(5) to replace §330.305 with §330.559.

#### *§335.590, Operational and Design Standards*

The commission adopts an amendment to §335.590 which corrects cross-referenced citations to sections in Chapter 330 due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission adopts an amendment to §335.590(1) to replace §330.111 with §330.121. The commission adopts an amendment to §335.590(2) to replace §330.112 with §330.123. The commission also adopts an amendment to §335.590(2) to replace Notices with Notice. The commission adopts an amendment to §335.590(3) to replace §330.113 with §330.125. The commission also adopts an amendment to §335.590(3) to replace §330.113(b)(3) with §330.125(b)(3). The commission adopts an amendment to §335.590(4) to replace §330.114 with §330.127. The commission adopts an amendment to §335.590(5) to replace §330.115 with §330.129. The commission adopts an amendment to §335.590(6) to replace §330.116 with §330.131. The commission adopts an amendment to §335.590(7) to replace §330.117(a) - (c) with §330.133(a) - (c). The commission adopts an amendment to §335.590(8) to replace §330.119 with §330.137. The commission adopts an amendment to §335.590(9) to replace §330.120 with §330.139. The commission adopts an amendment to §335.590(10) to replace §330.121 with §330.141. The commission adopts an amendment to §335.590(11) to replace §330.122 with §330.143(a). The commission also adopts an amendment to §335.590(11) to replace Benchmarks with Benchmark. The commission adopts an amendment to §335.590(12) to replace §330.125 with §330.149. The commission also adopts an amendment to §335.590(12) to replace "Air Criteria" with "Odor Management Plan." The commission adopts an amendment to §335.590(13) to replace §330.127 with §330.153. The commission adopts an amendment to §335.590(14) to replace §330.128 with §330.155. The commission adopts an amendment to §335.590(15) to replace §330.129 with §330.157. The commission adopts an amendment to §335.590(16) to replace §330.130 with §330.159. The commission adopts an amendment to §335.590(17) to replace §330.131 with §330.161. The commission also adopts an amendment to §335.590(17) to replace "Abandoned Oil and Water Wells" with "Oil, Gas, and Water Wells." The commission adopts an amendment to §335.590(18) to replace §330.132 with §330.163. The commission adopts an amendment to §335.590(19) to replace §330.133 with §330.165. The commission adopts an amendment to §335.590(20) to replace §330.134 with §330.167. The commission adopts an amendment to §335.590(21) to replace §330.138 with §330.175. The commission also adopts an amendment to §335.590(21) to add "Visual" after "relating to." The commission adopts an amendment to §335.590(22) to replace §330.139 with §330.207. The commission also adopts an amendment to §335.590(22) to replace "Discharge" with "Management." The commission adopts an amendment to §335.590(24)(A)(i)(I) to add "for con-

stituents" after "the concentration values" to clarify the intent of the requirement. The commission also adopts an amendment to §335.590(24)(A)(i)(I) to replace "Table 1 of §330.241" with "§330.419(a)." The commission additionally adopts an amendment to §335.590(24)(A)(i)(I) to delete "relevant" before "point of compliance." The commission adopts an amendment to §335.590(24)(A)(iv) to delete "relevant" before "point of compliance" in all sentences in the subparagraph. The commission also adopts an amendment to §335.590(24)(A)(iv) to reference the definition of point of compliance as defined in §330.3. The commission adopts an amendment to §335.590(24)(C) to replace §330.54 with §330.63. The commission also adopts an amendment to §335.590(24)(C) to replace "Technical Requirements" with "Contents." The commission adopts an amendment to §335.590(24)(D) to replace "Subchapter I" with "Subchapter J." The commission adopts an amendment to §335.590(24)(E) to replace §330.253 in two sentences in the paragraph with §330.457, respectively. The commission also adopts an amendment to §335.590(24)(E) to delete "and MSW Sites."

#### *§335.591, Groundwater Protection Design and Operation*

The commission adopts an amendment to §335.591 to correct cross-referenced citations to sections in Chapter 330 due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission adopts an amendment to §335.591(1) to replace §330.201 with §330.333. The commission adopts an amendment to §335.591(2) to replace §330.202 with §330.335. The commission also adopts an amendment to §335.591(2) to replace "Alternate" with "Alternative." The commission furthermore adopts to add "Liner" after "Alternative." The commission adopts an amendment to §335.591(3) to replace §330.203 with §330.337. The commission also adopts an amendment to replace "Special Conditions (Liner Design Constraints)" with "Special Liner Design Constraints." The commission adopts an amendment to §335.591(4) to replace §330.204 with §330.555. The commission also adopts to replace "Geological Faults" with "Fault Areas." The commission adopts an amendment to §335.591(5) to replace §330.205 with §330.339. The commission also adopts an amendment to §335.591(5) to delete "Soil and" after "relating to." The commission adopts an amendment to §335.591(6) to replace §330.206 with §330.341. The commission also adopts to replace "Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER)" with "Soil Liner Evaluation Report and Geomembrane Liner Evaluation Report."

#### *§335.592, Groundwater Monitoring and Corrective Action*

The commission adopts an amendment to §335.592 to correct cross-referenced citations to sections in Chapter 330 due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission adopts an amendment to §335.592(1) to replace §330.230 with §330.401. The commission adopts an amendment to §335.592(2) to replace §330.231 with §330.403. The commission adopts an amendment to §335.592(3) to replace §330.233 with §330.405. The commission adopts an amendment to §335.592(4) to replace §330.234 with §330.407. The commission also adopts the addition of "Program for Type I Landfills" after "Detection Monitoring." The commission adopts an amendment to §335.592(5) to replace §330.235 with §330.409. The commission adopts an amendment to §335.592(6) to replace §330.236 with §330.411. The commission adopts an amendment to §335.592(7) to replace §330.237 with §330.413. The commission adopts an amendment to §335.592(8) to replace §330.238 with §330.415. The

commission adopts an amendment to §335.592(9) to replace §330.241 with §330.419. The commission adopts an amendment to §335.592(10) to replace §330.242 with §330.421.

#### *§335.593, Closure and Post-Closure Care Requirements*

The commission adopts an amendment to §335.593 to correct cross-referenced citations to sections in Chapter 330 due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission adopts an amendment to §335.593 to replace §330.253 with §330.457. The commission also adopts an amendment to §335.593 to delete "and MSW sites." These amendments are as stringent as the current state rules. These amendments are not required to maintain authorization.

#### *§335.601, Purpose, Scope and Applicability*

The commission adopts new §335.601 to conform to federal regulations promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). This amendment incorporates requirements for a standard permit. Specifically, this new section incorporates the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings.

#### *§335.602, Standards*

The commission adopts new §335.602 to conform to federal regulations promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). This new section incorporates by reference requirements for a standard permit. Specifically, this new section incorporates the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute.

Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions under 42 United States Code (USC), §6926(g), which already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. Likewise, there is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because the regulated community benefits from the greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations.

Because the regulated community is already required to comply with the more stringent federal rules, the adopted equivalent state rules will not cause any adverse effects. There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

First, the rulemaking does not exceed a standard set by federal law because the commission adopts this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program.

Second, although the rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the rulemaking to maintain authorization of the state hazardous waste program.

And fourth, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission adopts this rulemaking under Texas Water Code (TWC), §5.103 and §5.105 and under Texas Health and Safety Code (THSC), §361.017 and §361.024.

The commission solicited comments on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 applies. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4).

The specific purpose of the rulemaking is to maintain state RCRA authorization by proposing state hazardous waste rules that are equivalent to the federal regulations. The rulemaking will substantially advance this purpose by adopting rules that incorporate and refer to the federal regulations.

Promulgation and enforcement of the rules will not be a statutory or constitutional taking of private real property. Specifically, the rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations.

The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules will not burden, restrict, or limit the owner's right to property and will not reduce the value of property by 25% or more. Likewise, the regulated community is not unduly burdened by those revisions providing greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found that the adopted rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 *et seq.* Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the rule amendments will update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules do not violate any applicable provisions of the CMP's stated goals and policies.

The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

#### PUBLIC COMMENT

The commission held a public hearing on June 16, 2009. The comment period closed on June 22, 2009. No comments were received.

### SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

#### 30 TAC §§335.1, 335.2, 335.29, 335.31

##### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105, (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code, (THSC), §361.017 (relating

to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024, (relating to Rules and Standards) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez

Director, Environmental Law Division

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### SUBCHAPTER B. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

#### 30 TAC §335.47

##### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105, (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code, (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024, (relating to Rules and Standards) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

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### SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

#### 30 TAC §§335.69, 335.76

##### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105 (relating to General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code, (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024 (relating to Rules and Standards), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

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## SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

**30 TAC §§335.112, 335.116, 335.118, 335.125**

### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105 (relating to General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code, (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024 (relating to Rules and Standards), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

**30 TAC §§335.152, 335.163 - 335.166, 335.173, 335.175**

### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105 (relating to General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code, (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024 (relating to Rules and Standards), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

### DIVISION 2. HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

**30 TAC §§335.221, §335.224**

### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105 (relating to General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code, (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024 (relating to Rules and Standards), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **DIVISION 5. UNIVERSAL WASTE RULE**

### **30 TAC §335.261**

#### **STATUTORY AUTHORITY**

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105 (relating to General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024 (relating to Rules and Standards), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **SUBCHAPTER O. LAND DISPOSAL RESTRICTIONS**

### **30 TAC §335.431**

#### **STATUTORY AUTHORITY**

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105 (relating to General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024 (relating to Rules and Standards), which authorize the commission to regulate indus-

trial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **SUBCHAPTER R. WASTE CLASSIFICATION**

### **30 TAC §335.504**

#### **STATUTORY AUTHORITY**

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105 (relating to General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024 (relating to Rules and Standards), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **SUBCHAPTER T. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF COMMERCIAL INDUSTRIAL NONHAZARDOUS WASTE LANDFILL FACILITIES**

### **30 TAC §§335.582 - 335.584, 335.590 - 335.593**

#### **STATUTORY AUTHORITY**



The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105 (relating to General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024 (relating to Rules and Standards), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 2009.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: October 29, 2009

Proposal publication date: May 22, 2009

For further information, please call: (512) 239-6090

## SUBCHAPTER U. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARD PERMIT

### 30 TAC §§335.601, §335.602

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and §5.105 (relating to General Policy), which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and §361.024 (relating to Rules and Standards), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted new sections implement THSC, Chapter 361.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

##### SUBCHAPTER I. DEPREDAATION PERMITS

#### 31 TAC §§65.220 - 65.233

The Texas Parks and Wildlife Commission adopts new §§65.220 - 65.233, concerning Permits to Control Depredating Wildlife. Sections 65.220, 65.222, 65.225 - 65.227, 65.231, and 65.232 are adopted with changes to the proposed text as published in the July 24, 2009, issue of the *Texas Register* (34 TexReg 4845). Sections 65.221, 65.223, 65.224, 65.228 - 65.230, and 65.233 are adopted without changes and will not be republished.

The change to §65.220, concerning Definitions, removes the word "recent" from paragraph (4)(B), which defines the types of evidence the department finds acceptable to prove that crop depredation is occurring. As proposed, the rule would have allowed "recent or current photographs or video" to be submitted. The department has determined that "recent" is a vague term that should be eliminated. The change is necessary to ensure that permit issuance is based on current information.

The change to §65.222, concerning Application and Issuance, alters subsection (a)(1) clarifying that an application for a depredation permit must contain the permanent residence address of each person conducting activities authorized under the depredation permit. The change is necessary to ensure that a physical location where a person can be easily located is associated with each person authorized to engage in activities under a depredation permit, which allows the department to efficiently contact persons in the event the department needs to communicate with them.

The change to §65.225, concerning Notification, alters proposed subsection (b), which would have required a permittee to notify the department within two hours following the unscheduled killing of depredating wildlife, to require advance notification of the permittee's intent to kill depredating wildlife on an unscheduled basis. The department determined that the provision as proposed would have been problematic to enforce, since there would be no way to determine that the two-hour timeframe had been met. The department acknowledges that it is not always possible to plan control activities well in advance, and the change is intended to allow permittees to address situations in which an unanticipated opportunity to kill depredating wildlife presents itself by calling the notification number provided on the permit prior to engaging in control activities.

The change to §65.226, concerning Means and Methods, alters subsection (a) to allow the department to prescribe the use of shotguns loaded with slugs in instances where rifle fire presents safety or property concerns.

The change to §65.227, concerning Documentation, Reporting, and Recordkeeping, alters proposed subsection (b)(5) to require a permittee to maintain as part of the daily log the phone number and permanent physical address of the organization or person to whom wildlife is donated. The change is necessary to allow the department to more efficiently determine, if necessary, that

persons or organizations named as recipients actually received the wildlife.

The change to §65.232, concerning Fees, reduces the fee for a depredation permit from \$500 to \$250. Testimony provided to the department convinced the department that the proposed fee of \$500 would discourage persons experiencing genuine depredation problems from obtaining a permit. The department will monitor the costs of administering and enforcing the program in order to determine if additional fee reductions or increases are necessary.

The change to §65.232, concerning Prohibited Acts, would clarify the provisions of paragraph (4). As proposed, paragraph (4) made it an offense for any person "to offer or accept money or anything of value in exchange for participation in activities under depredation permit." The change would add language to make it absolutely clear that any fee paid in exchange for hunting, meat, or antlers constitute a criminal act, as well.

House Bill 1965 (H.B. 1965), enacted by the 81st Texas Legislature (Regular Session), amended Parks and Wildlife Code, Chapter 43, Subchapter H, to alter statutory provisions governing the lethal control of wildlife protected by the Parks and Wildlife Code that is causing serious damage to agricultural, horticultural, or aquacultural interests. (Note: The term "aquiculture" is used in Parks and Wildlife Code, Chapter 43, Subchapter H; however, the more commonly used variant "aquaculture" is used to avoid confusion.)

Prior to the enactment of H.B. 1965, Parks and Wildlife Code, Subchapter H, provided for the issuance of a permit to kill protected wildlife, provided the applicant presented evidence to a local county judge or mayor clearly showing that the wildlife was causing serious damage to agricultural, horticultural, or aquacultural interests or other property, or was a threat to public safety. Upon receiving notice from a county judge or mayor, the department was required to inspect the property where the damage was alleged to occur and to make recommendations appropriate for controlling the damage or threat. Under the previous law, a person could apply for a permit (hereinafter, "depredation permit") to kill the protected wildlife only if the measures recommended by the department had failed to remedy the problem caused by the depredating wildlife. A depredation permit specifying the time, place, number and type of wildlife to be killed could be issued by the department, and wildlife killed under a permit was required to be donated to a charitable institution, hospital, a needy person, any other appropriate person, or as directed by the court.

H.B. 1965 provides for a more streamlined, efficient, and timely process for controlling wildlife causing serious damage to commercial agricultural, horticultural, or aquacultural interests, or that is a threat to public safety. The provisions of H.B. 1965 eliminate the involvement of county judges and mayors and require persons seeking a depredation permit to apply directly to the department. H.B. 1965, retains the applicability of Subchapter H to situations in which protected wildlife pose a threat to public safety, but eliminates the applicability of the subchapter to situations in which protected wildlife cause damage to property other than agricultural, horticultural, or aquacultural interests, and requires an agricultural, horticultural, or aquacultural interest to be "commercial" in order to qualify for issuance of a depredation permit.

Additionally, H.B. 1965 authorizes the Texas Parks and Wildlife Commission to adopt rules necessary to implement the provi-

sions of Parks and Wildlife Code, Chapter 43, Subchapter H, including rules governing reports, reinstatement of cancelled permits, possession of wildlife resources taken or held under the subchapter, qualifications for permit issuance, and the electronic issuance of permits.

The new rules establish definitions; general provisions; permit application and issuance standards; inspection requirements; the period of validity for depredation permits; notification requirements; lawful means and methods; documentation, reporting, and recordkeeping requirements; provisions for permit denial, cancellation, and reinstatement; establish fees; and provide for prohibited acts and penalties for violation.

New §65.220, concerning Definitions, would set forth the meanings for words and terms used in the subchapter. The new section is necessary in order to provide unambiguous meanings so that compliance and enforcement are not problematic.

New §65.220(1) would define the term "appropriate recipient." Parks and Wildlife Code, §43.155, requires the holder of a depredation permit to dispose of wildlife killed under the permit by donating the wildlife to a charitable institution, a hospital, a needy person, or any other appropriate recipient. The new rules define "appropriate recipient" as "a person or public or private organization that utilizes the donated wildlife for the public good and not for pecuniary gain." It is clear that under Parks and Wildlife Code, Subchapter H, as amended by H.B. 1965, wildlife killed under a depredation permit is to be used to provide a public and not personal benefit. H.B. 1965 amended Parks and Wildlife Code, §43.155, to stipulate that "the permit holder or a person designated under §43.154(c)(4) may not keep or sell any part of the wildlife taken under this subchapter, including antlers." The department therefore intends to ensure that an "appropriate recipient" is an entity or person engaged in an activity that is consistent with Subchapter H, as amended.

New §65.220(2) would create definitions for the term "evidence of commercial interest." Prior to the enactment of H.B. 1965, Parks and Wildlife Code, §43.151, stipulated that depredation permits could be issued to "agricultural, horticultural, or aquacultural interests." H.B. 1965 amended Parks and Wildlife Code, §43.151, to further restrict eligibility to "commercial" agricultural, horticultural, or aquacultural interests. Since there are agricultural, horticultural, and aquacultural interests that are not commercial in nature, it is therefore necessary to establish criteria that can be used to determine eligibility for the issuance of a depredation permit.

New §65.220(2) defines "evidence of commercial interest" by providing two mechanisms for demonstrating that the applicant's agricultural, horticultural or aquacultural interests are, in fact, commercial interests.

New §65.220(2)(A) defines "evidence of commercial interest" as an attestation by an applicant for a depredation permit that the applicant either raises crops or products that are sold or exchanged for cash or anything of value, or that the applicant raises crops or products to feed livestock or aquacultural stock that is sold or exchanged for cash or anything of value. As noted earlier, H.B. 1965 provides a more streamlined and efficient method for persons to obtain depredation permits. To that end, the department believes an attestation that serious damage is occurring is an initially sufficient basis to justify permit issuance, provided the applicant complies with all other provisions of the rules.

New §65.220(2)(B) defines "evidence of commercial interest" as "sales receipts, tax receipts, or other documentation acceptable

to the department" that the applicant either raises crops or products that are sold or exchanged for cash or anything of value, or raises crops or products to feed livestock or aquacultural stock that is sold or exchanged for cash or anything of value. The definition is intended to address those situations in which a permittee's original attestation, for whatever reasons, requires verification. The definition is necessary to give the department a mechanism to make a determination that a fraudulent application has been submitted, which by other provisions of the rules would be a basis for permit cancellation, permit denial, or prosecution.

New §65.220(3) establishes "depredation permit" to mean a permit issued under the authority of the subchapter. The definition is intended to provide a shorthand term for "permits to control wildlife protected by the Parks and Wildlife Code" and is necessary avoid repetition of an unwieldy phrase.

New §65.220(4) defines the term "evidence clearly showing serious damage." As amended by H.B. 1965, Parks and Wildlife Code, §43.151 establishes a statutory standard for a person who seeks issuance of a depredation permit. That standard is "a person who has evidence clearly showing that wildlife protected by this code is causing serious damage to commercial agricultural, horticultural, or aquacultural interests, or is a threat to public safety." New §65.220(4) defines "evidence clearly showing serious damage" by providing three mechanisms for demonstrating that wildlife protected by the Parks and Wildlife Code are causing serious damage to the applicant's commercial agricultural, horticultural or aquacultural interests. The new provisions are intended to address those situations in which a permittee's attestation, for whatever reasons, requires verification and are necessary to give the department a method of making a determination that a fraudulent application has been submitted, which by other provisions of the rules would be a basis for permit cancellation, permit denial, or prosecution.

New §65.220(4)(A) defines "evidence clearly showing serious damage" as an attestation by an applicant for a depredation permit that wildlife protected by the Parks and Wildlife Code is causing serious damage to a commercial agricultural, horticultural, or aquacultural crop or product. As noted earlier, H.B. 1965 provides a more streamlined and efficient method for persons to obtain depredation permits. To that end, the department believes an attestation that serious damage is occurring is an initially sufficient basis to justify permit issuance, provided the applicant complies with all other provisions of the rules.

New §65.220(4)(B) defines "evidence clearly showing serious damage" as "current photographs or video of commercial agricultural, horticultural, or aquacultural crops or operations demonstrating serious damage caused by wildlife protected by the Parks and Wildlife Code." The definition is necessary to provide the department with the option of requesting tangible proof that damage is occurring in the event an attestation, for whatever reasons, requires verification, and is necessary to give the department a method of making a determination that a fraudulent application has been submitted, which by other provisions of the new rules would be a basis for permit cancellation, permit denial, or prosecution.

New §65.220(4)(C) defines "evidence clearly showing serious damage" as "an affidavit supplied by an agent of Texas AgriLIFE Extension Service attesting to the fact that wildlife protected by the Parks and Wildlife Code is causing serious damage to commercial agricultural, horticultural, or aquacultural crops or products." The definition is intended to provide the department with

the option of requiring that the applicant submit expert testimony from an entity that is acknowledged as a reliable source of expertise on the subject of agriculture.

New §65.220(5) defines the term "destruction of antlers and horns." New §65.232(5) requires permittees to destroy the antlers or horns of deer, antelope, or bighorn sheep killed under a depredation permit. The definition is necessary because H.B. 1965 amended Parks and Wildlife Code, §43.155, to stipulate that "the permit holder or a person designated under §43.154(c)(4) may not keep or sell any part of the wildlife taken under this subchapter, including antlers." In order to ensure that antlers or horns are not sold, it is necessary to require that antlers and horns be destroyed, and, therefore, a definition of what constitutes destruction is in order.

New §65.220(6) defines the term "protected wildlife" as wildlife protected by the Parks and Wildlife Code. This definition is intended to enhance readability of the subchapter.

New §65.221, concerning General Provisions, sets forth a number of provisions that are generally applicable to depredation permit activities and permittees.

New §65.221(a) stipulates that activities conducted under a depredation permit be conducted only by persons named on the permit. The provision is necessary because wildlife is the property of the people of the state. It is therefore the department's duty to ensure that under extraordinary circumstances, such as the need to control depredating wildlife under a depredation permit, such activities are carefully regulated.

New §65.221(b) provides that a depredation permit authorizes the killing of protected wildlife at any time, irrespective of open seasons and lawful shooting hours. The purpose of the depredation permit is to allow the efficient killing of wildlife causing serious damage to commercial agricultural, horticultural, or aquacultural interests. It is therefore necessary to enable permittees to accomplish this purpose in the most advantageous way possible, which logic dictates should be at any time that it is possible to kill the depredating wildlife.

New §65.221(c) provides that a depredation permit may be issued upon a finding by the department that wildlife protected by the Parks and Wildlife Code are a threat to public safety. Parks and Wildlife Code, §43.151, authorizes the department to issue a depredation permit on the basis of public safety. The new provision recapitulates the statutory provision for the sake of clarity.

New §65.221(d) provides that lawful hunting activities may take place on a property for which a depredation permit has been issued. The provision is necessary because the department does not wish to interfere with hunting activities on properties that sustain or provide recreational hunting opportunity while also being used for commercial agricultural, horticultural, or aquacultural purposes.

New §65.221(e) creates exceptions for the control of depredating cormorants and fur-bearing animals, which is provided for by other regulatory mechanisms. The new provision is necessary to avoid duplicative rules.

New §65.221(f) stipulates that nothing in the new subchapter shall be construed to relieve any person of any other applicable requirement of federal, state, or local law, including hunting license and hunter education requirements, which is necessary to clearly establish that the new rules are not intended to replace, supplant, or negate any other laws, such as local ordinances governing the discharge of firearms.

New §65.221(g) provides that the department will not issue a depredation permit for the killing of mule deer, pronghorn antelope, or desert bighorn sheep, except as provided in Parks and Wildlife Code, §43.152(b) and §43.154(a-1). Parks and Wildlife Code, §43.152(b) and §43.154(a-1) dictate special provisions regarding the killing of depredating mule deer, pronghorn antelope, or desert bighorn sheep. These provisions require, rather than merely authorize, the department to conduct an inspection of the property for which a permit is sought and to make recommendations to the applicant for ways to minimize the threat or damage. Also, the applicant must make a reasonable effort to comply with the department's recommendations. Rather than repeat the language of Parks and Wildlife Code, §43.152(b) and §43.154(a-1), the rule merely references those sections.

New §65.221(h) stipulates that the department may at any time require an applicant for a depredation permit or a person to whom a depredation permit has been issued to furnish evidence of commercial interest as defined in §65.220(4)(B) or (C). The provision is necessary to provide the department with a mechanism to verify a claim that serious economic damage is occurring.

New §65.222, concerning Application and Issuance, prescribes requirements governing the application and issuance of depredation permits.

New §65.222(a) requires an applicant for a depredation permit to complete and submit an application on a form supplied by the department, accompanied by the fee specified elsewhere in the subchapter, which is necessary to establish an orderly and controlled mechanism for person to apply for a depredation permit. New §65.222(a)(1) requires applicants to furnish the name, Texas driver's license or identification number, and Social Security number, and physical address of the permanent residence of each person for whom authorization is sought to conduct activities under a depredation permit. The provision is necessary to establish the legal identity and whereabouts of prospective permittees and participants for purposes of law enforcement activities. Texas is required by federal law to obtain the Social Security number of any person to whom a license or permit is issued, for purposes of child-support enforcement. New §65.222(a)(2) and (3) require the applicant to also provide evidence of commercial interest and evidence clearly showing serious damage, as defined in the subchapter.

New §65.222(b) stipulates that by signing an application for a depredation permit, the applicant swears to the truth and accuracy of all information contained in the application. The provision is necessary because Parks and Wildlife Code, §43.153, requires that an application for a depredation permit contain a sworn statement containing the facts relating to the damage or threat and an agreement to comply with the provisions of Parks and Wildlife Code, Chapter 43, Subchapter H and any rules adopted by the commission under that subchapter.

New §65.222(c) stipulates that the department, upon a determination that measures other than depredation permit are warranted, may make recommendations concerning ways to minimize the damage or threat and will not issue a permit unless it is satisfied that the applicant has made a reasonable attempt to implement the recommendations. The provision is necessary because the department views the issuance of a depredation permit as a remedy of last resort. If there are other management alternatives that would be effective, such as fencing, harassment, or hunting, the department believes that those alter-

natives should be pursued and a depredation permit issued only when those alternatives fail.

New §65.223, concerning Inspection, provides that the department may inspect a property to determine if issuance of a depredation permit is warranted, and that the department may cancel a depredation permit if an inspection reveals that a permittee is not complying or has not complied with the provisions of the subchapter or the provisions of a depredation permit. The new section is necessary to allow the department to verify, if necessary, that depredation is occurring on a prospective property or that a permittee is in fact complying with the provisions of a permit.

New §65.224, concerning Period of Validity, sets forth the conditions under which a depredation permit is valid.

New §65.224(a) stipulates that a depredation permit is not valid unless the crop for which the permit is issued has been planted and is growing on the property for which the permit is issued. The provision is necessary because H.B. 1965 authorizes the killing of wildlife only to protect commercial agricultural, horticultural, or aquacultural interests. It is therefore logical to conclude that a permit should not be valid unless the basis for permit issuance exists.

New §65.224(b) stipulates that a depredation permit is not valid after a crop or product for which the permit has been issued has been harvested on the property for which the permit has been issued. The provision is necessary because the statutory intent of both Parks and Wildlife Code and H.B. 1965 is to authorize the killing of wildlife only to protect commercial agricultural, horticultural, or aquacultural interests. It is therefore logical to conclude that a permit should not be valid unless the basis for permit issuance exists.

New §65.224(c) stipulates that the department will authorize a period of validity for a depredation permit, when applicable or necessary, based on the planting dates and growing seasons for individual crops. The provision is necessary because there is no reason for a depredation permit to be valid at times when the crop or product for which the permit is sought cannot be grown or is not viable.

New §65.224(d) stipulates that the department will authorize the period of validity of a depredation permit issued because of a threat to public safety. The department has determined that because of the wide variety of possibilities related to issues of public safety, the department should prescribe the period of validity of permits issued on that basis on a case-by-case basis.

New §65.225, concerning Notification, establishes requirements for permittees to notify the department when permitted activities will be or have been conducted.

New §65.225(a) requires permittees to notify the department not more than 24 hours nor less than four hours prior to any activity authorized by the permit. The provision is necessary to provide the department an opportunity to observe permitted activities and verify compliance.

New §65.225(b) allows permittees who are unable to provide notice of permitted activities under §65.225(a) to provide notice of permitted activities prior to the killing of any wildlife. The provision is necessary to provide the department an opportunity to observe permitted activities and verify compliance in instances where permittees have an unplanned opportunity to conduct permitted activities and are unable to provide the notice required by subsection (a).

New §65.226, concerning Means and Methods, sets forth the manners in which wildlife authorized to be killed under a depredation permit may be killed. The intent of the department is to authorize only the most effective and efficient methods for killing wildlife under a depredation permit.

New §65.227, concerning Documentation, Reporting, and Recordkeeping, prescribes the requirements for identifying wildlife killed under a depredation permit, reporting requirements related to permitted activities, and recordkeeping.

New §65.227(a) requires all wildlife killed under a depredation permit to be documented and/or tagged as set forth in the provisions of a permit. Because a depredation permit may be authorized to kill any wildlife protected by the Parks and Wildlife Code, the great variety of possible scenarios cannot be specifically addressed in the regulations. For instance, a depredation permit could authorize the killing of thousands of squirrels, or a small number of javelina. Therefore, the rules allow the department to issue specific instructions for the labeling, tagging, or documentation of specific species in the provisions of the permit.

New §65.227(b) requires a permittee to maintain an accurate daily log of all activities conducted under a depredation permit and would specify the specific types of information that must be recorded in the daily log. The provision would require the daily log to contain the number, species, sex, date, and disposition of all wildlife killed under a depredation permit, which is necessary in order for the department to be able to determine that the permittee is in compliance with the provisions of the permit. The new subsection also requires that for permits authorizing the killing of deer, the daily log reflect whether the deer was antlered or antlerless, and if antlered, the number of points on each main beam. The provision is necessary because the department intends to ensure that all deer killed are accounted for, especially buck deer. Antlers from buck deer are a commodity, and the department seeks to remove the opportunity for unscrupulous persons to engage in the sale or trafficking of antlers, which is specifically forbidden under the provisions of H.B. 1965.

New §65.227(c) requires permittees to submit a final report to the department within ten days of the expiration of a depredation permit. The provision is necessary to ensure compliance with the rules and with the provisions of H.B. 1965.

New §65.228, concerning Permit Cancellation, allows the department to cancel a depredation permit if a permittee fails to conduct permitted activities, fails to timely submit required reports, fails to maintain the daily log, misrepresents information on an application, misrepresents information on a report or record, or violates a provision of a depredation permit or Parks and Wildlife Code, Chapter 43, Subchapter H. The new section is necessary because Parks and Wildlife Code, Subchapter H, as amended by H.B. 1965, provides for the cancellation of a depredation permit if the permit does not accomplish its intended purposes, if the permit holder fails to submit a required report to the department or if the permit holder intentionally made false claims on the application for the permit. The department believes that it is necessary to provide additional detail regarding the reasons for which the department may cancel a permit.

New §65.229, concerning Permit Reinstatement, allows for the reinstatement of a cancelled depredation permit upon a determination by the department that a cancelled depredation permit should be reinstated because of extenuating circumstances. The new section is necessary because there may be instances

in which a permittee is unable to accomplish permit activities due to circumstances beyond the permittee's control.

New §65.230, concerning Permit Denial, provides that the department may deny permit issuance or participation in permitted activities to any person who within five years of applying for a depredation permit has been finally convicted of a violation of Parks and Wildlife Code, Chapter 43, Subchapter H; a violation of the conditions of a depredation permit; or a violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or a felony. The new section is necessary because the department believes that a person who has been proven to demonstrate disregard for wildlife and conservation law should not be entrusted with a permit or be allowed to engage in permitted activities that allow the killing of wildlife out of season, and without regard to bag limits or lawful shooting hours.

New §65.231, concerning Fees, establishes a fee of \$250 for an application for a depredation permit. The new section is necessary because the department has determined that a fee in that amount is necessary to recoup a portion of the cost to the agency of administering and enforcing the rules.

New §65.232, concerning Prohibited Acts, for clarity's sake lists specific acts that are a violation of the subchapter.

New §65.232(1) and (2) clarifies that it is an offense for any person not named on a depredation permit to participate in activities under a depredation permit and for any person to whom a depredation permit has been issued to allow any person not named on the permit to engage in permitted activities. It is logical that unpermitted persons should not engage in permitted activities, whether by their own volition or by the acquiescence of a permittee.

New §65.232(3) clarifies that it is an offense to kill game animals or game birds outside of lawful shooting hours or during a closed season on a property for which a depredation permit has been cancelled. The new provision is necessary to make it absolutely clear that when a depredation permit is cancelled, all hunting laws of the state apply.

New §65.232(4) makes it an offense to offer or accept money or anything of value in exchange for participation in activities under a depredation permit, including any fee paid in exchange for hunting, meat, or antlers, except for persons employed by a person to whom a depredation permit is issued. The new provision is necessary to make clear that a depredation permit is not intended to allow a person to sell or trade permit privileges; however, an employee of the permittee who is named on a permit may engage in permitted activities as a consequence of employment.

New §65.232(5) makes it an offense to fail to immediately destroy the antlers or horns of a buck deer, antelope, or bighorn sheep killed by the person under a depredation permit. The new provision is necessary because under Parks and Wildlife Code, §65.155, as amended by H.B. 1965, a permit holder or a person designated under §43.154(c)(4) may not keep or sell any part of the wildlife taken under this subchapter, including antlers.

New §65.233, concerning Penalties, recapitulates the penalties prescribed for a violation of the subchapter or a permit by Parks and Wildlife Code, Chapter 43, Subchapter H. The new rule is necessary for the sake of easy reference.

One commenter opposed adoption and stated that the department is assuming authority, control, and power it does not have any. The department disagrees with the comment and responds

that the Texas Legislature enacted legislation regarding the depredation permit as set out in the rules. As a result, the rules have been promulgated in accordance with statutes enacted by the Texas Legislature. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should be more concerned about wildlife than the economic welfare of farmers and ranchers. The department disagrees with the commenter and responds that the department has been directed by the legislature to provide for the removal of wildlife that is depredating on agricultural, horticultural, or aquacultural interests. No changes were made as a result of the comment.

One commenter opposed adoption and stated that depredating wildlife should be controlled by public hunting. The department disagrees with the comment and responds that the logistics of using public hunters to control depredating wildlife would be prohibitively cumbersome and inefficient. In addition, the department believes that it is important that the control of depredating animals not be confused with recreational hunting. No changes were made as a result of the comment.

One commenter opposed adoption and stated that: the rules are process-heavy with details and paperwork. The commenter also stated that the rules should be modified to provide for the disposal of wildlife that are not desirable as food sources, such as coyotes; that the department allow family and friends to assist in depredation activities without being listed on the permit; and that the rules should not require the tagging of small animals. The department disagrees with the comment and responds that the process involved in obtaining and complying with a depredation permit is necessary to ensure that permits are not abused. The department believes that when considering the department's obligations regarding the management of wildlife, the recordkeeping and reporting requirements are minimal and not onerous. The department also responds that the rules apply only to protected wildlife (i.e., wildlife protected by seasons, bag limits, or possession limits). Coyotes, for instance, may be killed at any time and in any number; thus, a depredation permit is unnecessary to kill coyotes, which is also the case for feral hogs, nuisance furbearing animals, and most species of nongame. The department also responds that the requirement that only persons named on the permit be allowed to conduct depredation permit activities is necessary because a depredation permit authorizes the killing of wildlife outside of normal shooting hours and seasons and the department believes that knowing exactly who will be conducting such activities is an aide to enforcement and a good way to reduce or eliminate confusion and misunderstandings. The department also responds that the rules as adopted do not require all animals taken under a depredation permit to be tagged. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules do not address depredating birds. The department agrees that the rules do not address birds and responds that a federal permit is required to kill birds that are protected by the federal Migratory Bird Treaty Act, which includes all species of native birds other than European starlings, English sparrows, feral rock doves; yellow-headed, red-winged, rusty, or Brewer's blackbirds; grackles, cowbirds, crows, and magpies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fee structure appears to be hunter oriented and does not include the small farm operator who tries to correct a human caused imbalance in nature. The department disagrees with the comment and re-

sponds that activities conducted under a depredation permit are not hunting activities, and that the depredation permit is not intended to be an ecosystem management tool, but a lethal control mechanism for wildlife that is causing losses for agricultural, horticultural, or aquacultural interests. However, the department also notes that the fee was reduced from \$500 as contained in the original proposal to \$250. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be some provision in the rules to accommodate endangered species which are depredated upon. The department disagrees and notes that the rules are not intended to address depredation on wildlife resources, but depredation by wildlife resources. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should allow the use of shotguns to kill deer in situations where rifle fire could be unsafe or damage property. The department agrees with the comment and has made changes accordingly.

One commenter opposed adoption and stated that the department should ensure that wildlife populations are not adversely affected by depredation permit activities and that producers should be required to attempt non-lethal means of deterring depredation before the department issues permits to kill wildlife. The department agrees that wildlife populations should be protected and will not authorize any activity that negatively impacts the biological viability of any resource. The department also responds that §65.222(c), as adopted, allows the department to make recommendations for abating depredation in instances where the department has determined that measures other than a depredation permit are warranted, and stipulates that a depredation permit will not be issued if the department is not satisfied that the applicant has made a reasonable attempt to implement the recommendations. No changes were made as a result of the comment.

One person opposed adoption and stated that the rules should not require the destruction of antlers or horns because it is already illegal and would constitute waste. The department disagrees with the comment and responds that it is normally not unlawful to sell antlers or horns from game animals lawfully taken under a hunting license. However, Parks and Wildlife Code, §43.155, as amended by H.B. 1965, specifically prohibits the possession or sale of any part of wildlife taken under a depredation permit. The department has determined that requiring the immediate destruction of antlers and horns effectively accomplishes that goal. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the word "fencing" should be removed from §65.222(c). The commenter stated that if fencing is a prerequisite to obtaining a depredation permit, the law will be unworkable. The department disagrees with the comment and responds that the word "fencing" does not occur in §65.222 or elsewhere in the rules as adopted, and that the rules, as adopted, do not require fencing as a prerequisite to obtaining a depredation permit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the fee for a depredation permit should be \$250. The department agrees with the comment and has made changes accordingly.

One commenter opposed adoption and stated that the fee for a depredation permit should be \$100. The department disagrees

with the commenter and responds that the proposed fee of \$500 was calculated based on the anticipated cost to the department of administering and enforcing the program. However, as a result of public comment, the department has reduced the fee, as adopted, to \$250. The department will monitor the costs of administering and enforcing the program in order to determine if additional fee reductions or increases are necessary. The department is confident that the cost to the department of administering and enforcing the program would exceed the revenue generated by a fee of \$100 per permit. No changes were made as a result of the comment.

Six commenters opposed adoption and stated that the proposed fee of \$500 was too high. The department agrees with the comments and has made changes accordingly.

One commenter opposed adoption and stated that fencing cannot control deer; that permits should be valid from the end of hunting season until the beginning of the next hunting season; that is unnecessary to require landowners to record the number of antler points on bucks killed under a depredation permit; and that is isn't necessary to destroy antlers of bucks that are not trophy bucks. The department disagrees with the comment and responds, respectively, that the rule as adopted does not require anyone to erect a fence; that the department will establish a period of validity for depredation permits that corresponds to the planting and growing dates of crops in order to afford maximum opportunity to prevent depredation; and that the rules as adopted require the recording of antler points and the destruction of antlers in order to prevent the possibility of illegal possession or sale. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are discriminatory and violate farmers' rights. The department disagrees with the comment and responds that the rules as adopted will apply equally to persons covered by the rule. H.B. 1965, and the rules, as adopted, are actually expand farmers' ability to address depredation. Also, the rules as adopted do not discriminate against any person or class of person, nor do the rules violate any person's rights under the state or federal constitutions. No changes were made as a result of the comment.

One commenter opposed adoption and stated that applicants should not have to furnish additional information other than an attestation that serious economic damage is occurring to a crop. The department disagrees with the comment and responds that the rules allow initial permit issuance based on an attestation; however, if the department has reason to believe that the basis for the application is not a bona fide case of serious economic damage resulting from depredation by wildlife, the department believes it is necessary that additional information be submitted to substantiate the applicant's claim. No changes were made as a result of the comment.

The Southern Rolling Plains Cotton Growers Association commented in opposition to adoption of the proposed fee of \$500. The department's response to that comment occurs elsewhere in this preamble.

The Texas and Southwestern Cattle Raisers Association commented in favor of adoption of the rules.

The new rules are adopted under the authority of Parks and Wildlife Code, §11.027(b), which authorizes the department to establish fees to cover costs associated with the review of applications for permits authorized by the Park and Wildlife Code, and Chapter 43, Subchapter H, as amended by H.B. 1965, 81st Texas Legislature (Regular Session), which authorized the de-

partment to adopt rules to implement the subchapter, including rules governing reports, reinstatement of permits; possession of wildlife resources taken under a permits, and the circumstances required to qualify for a permit.

#### *§65.220. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Appropriate recipient**--A person or public or private organization that utilizes the donated wildlife for the public good and not for pecuniary gain.

(2) **Evidence of commercial interest**--Documentation required by the department to demonstrate that the applicant has a commercial interest in agriculture, horticulture, or aquaculture.

(A) The department shall require the attestation of the applicant on the application that agricultural, horticultural, or aquacultural crops or products raised or grown on a property for which a depredation permit is sought are:

(i) sold or exchanged for cash or anything of value; or

(ii) used to feed livestock, exotic livestock, or aquacultural stock that are sold or exchanged for cash or anything of value; or

(B) In addition to the attestation required by subparagraph (A) of this paragraph, the department may require additional information, such as sales receipts, tax receipts, or other documentation acceptable to the department indicating that agricultural, horticultural, or aquacultural crops or products raised or grown on a property for which a depredation permit is sought are:

(i) sold or exchanged for cash or anything of value; and/or

(ii) used to feed livestock, exotic livestock, or aquacultural stock that are sold or exchanged for cash or anything of value.

(3) **Depredation permit**--A permit issued under the provisions of this subchapter.

(4) **Evidence clearly showing serious damage**--Documentation required by the department to demonstrate that protected wildlife is causing serious damage. The department may require one or all of the following as evidence clearly showing serious damage:

(A) the attestation of an applicant for a depredation permit that wildlife protected by the Parks and Wildlife Code is causing serious damage to commercial agricultural, horticultural, or aquacultural crops or products;

(B) current photographs or video of commercial agricultural, horticultural, or aquacultural crops or products demonstrating serious damage caused by wildlife protected by the Parks and Wildlife Code; or

(C) an affidavit supplied by an agent of Texas AgriLIFE Extension Service attesting to the fact that wildlife protected by the Parks and Wildlife Code is causing serious damage to commercial agricultural, horticultural, or aquacultural crops or products.

(5) **Destruction of antlers or horns**--To saw, cut, or chop completely through each main beam of antler or horn at a point within two inches of the skull, and at the approximate midpoint between the base and tip of each main beam or horn.

(6) Protected wildlife--Wildlife protected by the Parks and Wildlife Code.

*§65.222. Application and Issuance.*

(a) An applicant for a depredation permit shall complete and submit to the department an application on a form supplied by the department, accompanied by the fee stipulated in §65.231 of this title (relating to Fees). The applicant shall furnish the information required by Parks and Wildlife Code, §43.153, including but not limited to:

(1) the name, Texas driver's license or personal identification number, Social Security number, and physical address of the permanent residence of each person for whom authorization is sought to conduct activities authorized under the depredation permit;

(2) evidence of commercial interest as defined in this subchapter; and

(3) evidence clearly showing serious damage, as defined in this subchapter.

(b) By signing the application, the applicant swears to the truth and accuracy of all information contained in the application, including the attestation that serious damage is occurring to a commercial agricultural, horticultural, or aquacultural crop or product.

(c) If the department determines that measures other than a depredation permit are warranted, it shall make recommendations concerning ways to minimize the damage or threat caused by wildlife. The department will not issue a depredation permit if it is not satisfied that the applicant has made a reasonable attempt to implement the recommendations.

*§65.225. Notification.*

(a) Except as provided in subsection (b) of this section, a permittee under this subchapter shall notify the department by calling the notification number provided on the permit not more than 24 hours nor less than four hours prior to any authorized activity.

(b) In the event that a permittee is presented with an unexpected opportunity to engage in permitted activities and is thus precluded from complying with the requirements of subsection (a) of this section, the permittee may engage in permitted activities, but only after notifying the department by calling the notification number provided on the permit.

*§65.226. Means and Methods.*

(a) Centerfire firearms are the only lawful means for killing deer, antelope, javelina, or desert bighorn sheep under a depredation permit; however the department may authorize the use of shotguns loaded with slugs when issues of safety or property make the use of rifles inappropriate.

(b) Centerfire firearms, rimfire firearms, and shotguns are the only lawful means for killing non-migratory game birds and squirrels under a depredation permit.

(c) Depredating nongame wildlife and alligators may be taken by any lawful means under a depredation permit.

(d) The department may authorize the live capture and humane dispatch of wildlife other than deer, antelope, javelina, bighorn sheep, and non-migratory game birds.

*§65.227. Documentation, Reporting, and Recordkeeping.*

(a) All wildlife killed under a depredation permit shall be documented and/or tagged as set forth in the permit provisions.

(b) A person conducting activities under a depredation permit shall maintain an accurate daily log of all activities conducted under a

depredation permit. The daily log shall be made available at the request of any department employee acting within the scope of official duties, and shall indicate, at a minimum:

(1) the number of wildlife killed by each person named on the permit;

(2) the sex of the wildlife killed by each person named on the permit;

(3) if the animal is a deer, whether the deer was antlered or antlerless, and if the deer was antlered, the number of antler points on each main beam;

(4) the date that each animal or bird was killed; and

(5) the disposition of the wildlife, to include:

(A) if the wildlife is donated to a person, the name, phone number, and permanent residence address of the person; or

(B) if the wildlife is donated to an organization, the name, phone number, and physical address of the organization.

(c) A person to whom a depredation permit has been issued shall submit a final report, including the daily log required by subsection (b) of this section, to the department's Austin headquarters, on a form supplied by the department, within 10 days of the expiration of the period of validity of the permit.

*§65.231. Fees.*

The application fee for a depredation permit shall be \$250. The fee prescribed by this section is nonrefundable.

*§65.232. Prohibited Acts.*

It is an offense for any person:

(1) not named on a depredation permit to kill protected wildlife under the depredation permit;

(2) to whom a depredation permit is issued to allow any person not named on the depredation permit to engage in permitted activities;

(3) to kill game animals or game birds outside of lawful shooting hours or during a closed season on a property for which a depredation permit has been cancelled;

(4) to offer or accept money or anything of value in exchange for participation in activities under a depredation permit, including any fee paid in exchange for killing wildlife, meat, or antlers, except for salaries or wages paid to persons employed by a person to whom a depredation permit is issued; or

(5) to fail to immediately destroy the antlers or horns of a buck deer, antelope, or bighorn sheep killed by the person under a depredation permit. Antlers and horns destroyed under this paragraph shall be discarded as waste.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 6, 2009.

TRD-200904477

Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



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## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

##### 34 TAC §§53.1, 53.4 - 53.7, 53.11, 53.13, 53.16, 53.20

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to the following rules for the certification of companies offering qualified investment products through what are commonly referred to as "403(b) plans," which educational institutions make available to their employees, and the registration of those products: §53.1, relating to definitions; §53.4, relating to qualifications for certification by companies offering qualified investment products that are annuity contracts; §53.5, relating to qualifications for certification by companies offering qualified investment products other than annuity contracts; §53.6 relating to procedure for certification; §53.7, relating to certification fee; §53.11, relating to coordination with regulatory and enforcement agencies; §53.13, relating to suspension or revocation of certification; and §53.16, relating to procedure for product registration. In addition, the Board adopts the following new rule: §53.20, relating to administrative service providers. The amended sections and new section are adopted mainly to address amendments to Article 6228a-5 of Vernon's Texas Civil Statutes (V.T.C.S.) made by House Bill 3480, enacted by the 81st Legislature, Regular Session (2009).

With the exception of §§53.1, 53.5, and 53.7, the Board adopts the amended rules and new rule without changes to the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6095) and grants the TRS staff authority to make any technical changes required for publication of the adopted rules. The Board adopts amended §53.1 and §53.5 with changes to the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6095). TRS staff also makes technical changes as authorized by the Board to §53.7 to the proposed text as published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6095).

House Bill 3480 amends Article 6228a-5 of V.T.C.S. to provide the following: to establish qualifications for third-party administrators of 403(b) plans; to permit "platform" companies to certify with TRS and register investment products; to update the list of affected regulatory agencies; and to provide civil penalties for violations of Article 6228a-5, V.T.C.S. To implement the statutory amendments and to update obsolete statutory references, TRS adopts amendments to its 403(b) rules as follows.

The amendments to §53.1 amend the definitions of the words "company" and "contract" and add a definition for the term "platform company" to clarify the meaning of other rules containing those terms. In response to a public comment, the adopted text of §53.1 has been modified to clarify general exceptions to the definition of "company" by restructuring the language of that definition.

The amendments to §53.4 update obsolete references to Insurance Code provisions that have been recodified.

Adopted §53.5 amends the qualifications necessary for certification of a company that offers qualified investment products other than annuity contracts and adds qualifications necessary for certification applicable to platform companies. In response to public comments, adopted §53.5 makes the following changes to the text of the proposed rule as published: the adopted section permits investment advisors registered with the State Securities Board to certify to TRS; it clarifies that fees charged by platform companies are inclusive of the fees of the underlying investments for purposes of complying with the fee limitations established by TRS; and it clarifies that a platform company must manage accounts totaling at least \$1 billion. Further, the adopted section as modified from the published text of the proposed rule adds the requirement that platform companies certifying with TRS have a specialized department dedicated to servicing qualified investment products.

The adopted amendments to §53.6 add the Texas Department of Banking and the Texas Attorney General to the list of agencies from which TRS may receive notice of a violation regarding a certified company or the company's products.

The adopted amendments to §53.7 specify that a company registering as both a company that offers qualified investment products other than annuity contracts and as a platform company shall pay one certification fee if the company files for its certifications at the same time but shall pay a separate certification fee for each certification filed separately.

The adopted amendments to §53.11 change the section heading to "Coordination with Regulatory and Enforcement Agencies" and add the Texas Department of Banking to the list of agencies to which TRS may refer complaints. The amendments also add the Texas Department of Banking and the Texas Attorney General to the list of agencies from which TRS may receive notice of violations regarding a company or product.

The adopted amendments to §53.13 change the rule text to include a reference to the ability of TRS to "deny" a certification, in accordance with the recent statutory amendments. The amendments also provide that suspension or revocation of certification of a company results in automatic suspension or revocation of registration of all the company's products, including those products registered by platform companies.

The adopted amendments to §53.16 permit platform companies to register qualified investment products, other than annuity contracts, issued and registered with TRS by another company. An additional amendment adds the Texas Department of Banking to the list of agencies from which TRS may receive notice of violations regarding a product.

Adopted new §53.20, titled "Administrative Service Providers," addresses a third-party administrator or service provider of an educational institution's 403(b) plan ("authorized administrative service provider"). Subsection (a) of the new section sets forth the statutory qualifications for a person, other than an employee of an educational institution, who enters into or renews a contract with an educational institution on or after September 1, 2009, to be an authorized administrative service provider. Subsection (b) of §53.20 sets forth the statutory requirement that, if an authorized administrative service provider who has entered into or renewed a contract with an educational institution on or after September 1, 2009, holds a meeting at the educational institution that is open to the institution's employees and at which qualified investment products will be marketed, then that service provider must provide representatives of certified companies that have

previously agreed to comply with the institution's administrative requirements an opportunity to attend and market their qualified investment products at the meeting. Subsection (c) of §53.20 sets forth a "safe harbor" for purposes of complying with subsection (b).

Comments were received regarding the proposed amendments to §§53.1, 53.5, 53.6, and proposed new 53.20. Those comments and disposition by the Board are as follows:

**Comment:** One commenter suggested it understood the intent of the proposed amendments to the definition of "Company" in §53.1(5), but suggested the last sentence be revised to indicate the phrase "unless such party or organization has primary liability for performance of the obligations in the product or contract, or unless the party or organization is a platform company" modifies all the general exclusions from the definition of "Company".

**TRS Response:** The Board believed that formatting would correctly capture the intent of the provision. The Board agreed to format the sentence in order to clarify that the last phrase modifies the four general exclusions from the definition of "Company." That change does not materially alter the proposed rule as previously published.

**Comment:** One commenter suggested the qualifications for a platform company as proposed in §53.5 be revised to include companies registered as investment advisors with the State Securities Board. The commenter stated such a revision would be consistent with §5 of HB 3480, reflect legislative intent, and be in the best interest of Texas educators. The commenter also suggested the qualifications for a platform company be revised to reflect the custodian either manage accounts of at least \$1 billion or the 403(b)(7) custodian hold assets of at least \$1 billion. Finally, the commenter suggested the qualifications for a platform company be revised to state that a platform company that is an investment advisor must manage assets of at least \$30 million.

**TRS Response:** The Board accepted the suggestion to permit registered investment advisors to certify as platform companies for the reasons stated in the comment. The Board also agreed to revise the proposed qualifications for a platform company to clarify that a platform company manage accounts totaling at least \$1 billion. Those changes do not materially alter the proposed rule as previously published. The Board declined to accept the suggested qualification that an investment advisor manage assets of at least \$30 million. The Board believes that the \$1 billion threshold for qualification of an investment advisor to be certified as a platform company reasonably represents the minimum value of managed assets necessary to indicate the financial soundness of a platform company and the continuing ability of that company to provide customer services and to maintain information resources needed to satisfy reporting requirements while enabling TRS to efficiently review platform company qualifications and administer the 403(b) program.

**Comment:** One commenter noted proposed §53.5(a)(3) (formerly §53.5(b)(3)) no longer had the requirement that a company be registered with the Securities and Exchange Commission if required by law. The commenter suggested that the requirement be that the company be registered with the Securities and Exchange Commission and/or have a current issuer's authorization from the State Securities Board.

**TRS Response:** With very few exceptions, the Texas State Securities Act requires persons offering securities for sale in Texas to register with the State Securities Board. Of the 36 companies

currently certified with TRS, each presented an issuer's authorization from the State Securities Board at the time of certification. The Securities and Exchange Commission is not obligated to cooperate with TRS in the administration of 403(b) provider certification and registration. Therefore, the Board believed the suggested requirement was not necessary and did not serve to advance the interests of the 403(b) program as set out in Article 6228a-5.

**Comment:** One commenter suggested proposed §53.5(b)(5) be clarified to require a platform company provide similar bundled or platform arrangements for plans with assets totaling at least \$1 billion. The commenter further suggested §53.5(b)(6) be clarified to require that a platform company not assess aggregate fees, costs or penalties, inclusive of the fees of the underlying investments, that exceed the maximum amounts established under TRS rules.

**TRS Response:** The Board believed the suggestion regarding §53.5(b)(5) did not add clarity to the rule, and therefore the suggestion was rejected. Although the requirement regarding fees found in proposed §53.5(b)(6) applicable to platform companies is identical to the language of §53.5(a)(6) applicable to issuing companies, the Board believed the suggestion regarding clarification of §53.5(b)(6) was a good one. There is a difference between issuing companies and platform companies, and the Board revised §53.5(b)(6) to clarify that fees charged by platform companies are inclusive of the fees of the underlying investments for purposes of complying with the fee limitations found in TRS' rules. That change does not materially alter the proposed rule as previously published.

**Comment:** One commenter pointed out that §53.6 states TRS may deny certification if TRS receives notice of a violation of a company's product from the Texas Department of Insurance, the State Securities Board, the Texas Department of Banking, or the Texas Attorney General. The commenter suggested parity would require denial of certification for a platform company if the platform company offers non-qualified mutual funds.

**TRS Response:** The Board believed §53.6 as proposed applies to platform companies as well as issuing companies. For example, under §5(c) of Art. 6228a-5, certified companies have a duty to report when an offered product is not qualified. Therefore, a certified platform company offering non-qualified products has a duty to report such to TRS, or be in violation of 6228a-5. If there is a violation of Art. 6228a-5, TRS may receive notification of such violation from the Texas Department of Insurance, the State Securities Board, the Texas Department of Banking, or the Texas Attorney General, and may deny certification of the platform company under §53.6.

**Comment:** Two commenters suggested that proposed §53.20 be revised to make a distinction between "voluntary" meetings and "involuntary meetings" at which 403(b) products may be marketed. One of those commenters further suggested that §53.20 be revised to prohibit a person administering an institution's 403(b) plan from holding mandatory meetings at which qualified investment products will be marketed.

**TRS Response:** The Board believed the suggestion to make a distinction between "voluntary" and "involuntary" meetings would not comply with Article 6228a-5. The Board further believed the suggestion regarding prohibiting mandatory meetings went beyond the statutory requirements found in Article 6228a-5 as amended by HB 3480, and was beyond TRS' authority to adopt.

Comment: One commenter suggested proposed §53.20(c) be revised to require the third-party administrator to maintain a registry of certified companies, to include both physical and email addresses. The commenter further suggested the obligation to provide notice of a meeting be broadened to include any written communication reasonably likely to be received by the vendor representative no later than ten business days prior to the meeting.

TRS Response: §53.20(c) is a "safe harbor" to the meeting notice requirement in §53.20(b). It is not intended to be the sole means and manner of complying with the requirement in §53.20(b). Therefore, the Board declined to accept the suggestion.

Comment: One commenter asked for confirmation that the proposed rules are not intended or construed to (a) prevent a single party from registering in more than one of the three registration categories, assuming it satisfies the requirements of any category in which it registers; or (b) prevent a platform company from offering an annuity product, alongside its registered custodial arrangement or independent of such an arrangement.

TRS Response: The Board confirmed the commenter's statements. TRS believes the amendments found in adopted §53.7, Certification Fee, contemplate that a company may certify to TRS that it offers both annuity contracts and investments other than annuity contracts. For a company certifying that it offers investments other than annuity contracts, §53.7(c) permits certification under both §53.5(a) and §53.5(b).

Statutory Authority: The amended and new rules are adopted under the authority of the following statutes: §6(a) of Article 6228a-5, Vernon's Texas Civil Statutes, which authorizes TRS, after consultation with the Texas Department of Insurance, the Texas Department of Banking, and the State Securities Board, to adopt rules to administer §§5, 6, 7, 8, 8A, 9A, 9B, 11, 12, and 13 of Article 6228a-5 relating to 403(b) company certification and product registration; and §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

#### §53.1. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Annuity or annuity contract--A qualified investment product that meets the requirements for a fixed or variable annuity contract under applicable insurance laws and rules.

(2) Board of trustees--The board of trustees of the Teacher Retirement System of Texas (TRS).

(3) Certified company--A company that meets all certification requirements, that has certified to TRS and been placed on the TRS list of certified companies, and whose certification has not expired or been withdrawn, denied, or revoked.

(4) Certify--To submit all required information to TRS and meet all required qualifications for certification, as indicated by TRS's inclusion of a company on the TRS list of certified companies.

(5) Company--An entity that offers a qualified investment product, including a platform company. Except for a platform company, a company is the issuer of the qualified investment product and has primary liability to the purchaser for performance of the obligations described in the product, contract, annuity contract or annuity certificate, or policy. A company offering qualified investment products that are not annuity contracts may be an affiliate by common ownership or

control of the issuer of the qualified investment products. Generally, unless a person or entity, or its affiliate, has primary liability for performance of the obligations in the product or contract, or such person or entity is a platform company, "company" does not include:

(A) a reinsurance company;

(B) a third party administrator;

(C) an entity performing duties under an administrative-services-only contract; or

(D) a representative such as a licensed or registered agent, broker, or investment advisor.

(6) Contract--An agreement through which an employee purchases or enrolls in a qualified investment product, such as an insurance policy, an annuity contract, or an annuity certificate in a group annuity contract, or establishes a qualified investment product such as a custodial account.

(7) Educational institution--A school district or an open-enrollment charter school.

(8) Eligible qualified investment--A qualified investment product offered by a company that:

(A) is certified to the board of trustees to offer qualified investment products that are annuity contracts; or

(B) is certified to the board of trustees to offer qualified investment products other than annuity contracts.

(9) Employee--An employee of an educational institution.

(10) Platform company--A company that offers, under §403(b)(7) of the Internal Revenue Code of 1986, custodial accounts that hold only investment products issued and registered with TRS by a certified company.

(11) Product--For the purpose of registration under this chapter, an annuity contract or custodial account, as defined under §403(b)(1) and §403(b)(7) of the Internal Revenue Code of 1986, offered by a company that meets certification requirements and has certified to TRS in accordance with this chapter.

(12) Qualified investment product--An annuity or investment that:

(A) meets the requirements of §403(b), Internal Revenue Code of 1986, and its subsequent amendments;

(B) complies with applicable federal insurance and securities laws and regulations; and

(C) complies with applicable state insurance and securities laws and rules.

(13) Register--To submit all required information to the retirement system about products to be offered and meet all required qualifications for registration, as indicated by retirement system acceptance of a company's application to register to offer products and inclusion of the company's individual products on the system's Web site.

(14) Representative--A person who sells or offers for sale an eligible qualified investment product on behalf of a certified company and who is licensed or registered if so required by law.

(15) Retirement system or TRS--The Teacher Retirement System of Texas.

(16) Salary reduction agreement--An agreement between an educational institution and an employee to reduce the employee's

salary for the purpose of making direct contributions to or purchases of a qualified investment product.

(17) Specialized department--One or more employees of a certified company or a company affiliated with the certified company dedicated to service of qualified investment products. If the certified company is authorized by the Texas Department of Insurance to issue annuity contracts in the State of Texas, the affiliated company must be part of an Insurance Holding Company System as described in §823.006, Insurance Code.

*§53.5. Qualifications for Certification by Companies Offering Qualified Investment Products Other than Annuity Contracts.*

(a) A company, other than a platform company, that offers qualified investment products other than annuity contracts may certify to TRS if it meets the following requirements:

(1) The company has at least five years' experience in qualified investment products and has a specialized department dedicated to service of qualified investment products.

(2) The company is qualified to do business in the State of Texas.

(3) The company, or an affiliate of the company related by common ownership or control, has a current issuer's authorization from the State Securities Board.

(4) The company has not had a license or registration suspended or revoked by state or federal regulators within the five years preceding the date the certification is filed.

(5) The company manages assets of at least \$2 billion.

(6) The company does not assess fees, costs, or penalties that exceed the maximum amounts established by this chapter.

(7) The company's products comply with the registration requirements of Article 6228a-5, Texas Civil Statutes, and this chapter, as applicable.

(b) A platform company that offers qualified investment products other than annuity contracts may certify to TRS if it meets the following requirements:

(1) The company has at least five years' experience in qualified investment products and has a specialized department dedicated to service of qualified investment products.

(2) The company is qualified to do business in the State of Texas.

(3) The company is registered as a securities dealer, agent, or investment advisor with the State Securities Board.

(4) The company has not had a license or registration suspended or revoked by state or federal regulators within the five years preceding the date the certification is filed.

(5) The company manages accounts totaling at least \$1 billion.

(6) The company does not assess fees, costs, or penalties, inclusive of the fees of the underlying investments, that exceed the maximum amounts established by this chapter.

(7) The products offered by the company comply with the registration requirements of Article 6228a-5, Texas Civil Statutes, and this chapter, as applicable.

*§53.7. Certification Fee.*

(a) A company shall pay a certification fee of \$3,000 to TRS at the time certification is filed.

(b) A company certifying that it offers both annuity contracts and investments other than annuity contracts shall pay one certification fee if the company files its certifications for both types of qualified investment products at the same time. If the certifications are filed separately, a company shall pay a separate certification fee for each separate certification.

(c) A company certifying under both §53.5(a) and (b) of this title (relating to Qualifications for Certification by Companies Offering Qualified Investment Products Other than Annuity Contracts) shall pay one certification fee if the company files its certifications under both §53.5(a) and (b) at the same time. If the certifications are filed separately, the company shall pay a separate certification fee for each separate certification.

(d) If a company proposes to certify more than one legal entity, the company shall submit separate certifications and fees for each legal entity.

(e) If TRS denies certification by a company, TRS shall retain the amount of the certification fee sufficient to reimburse TRS for its administrative costs associated with review of the certification. TRS may hold the entire certification fee for at least thirty business days after denial in order to determine whether the company will pursue certification.

(f) No portion of a certification fee is refundable if TRS revokes or suspends a certification or if a company withdraws its certification after it has been accepted by TRS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 2009.

TRD-200904578

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: October 29, 2009

Proposal publication date: September 4, 2009

For further information, please call: (512) 542-6438

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Proposed Rule Reviews

Texas Youth Commission

### Title 37, Part 3

Pursuant to Government Code §2001.039, the Texas Youth Commission files this notice of intent to review and consider for readoption 37 TAC Chapter 91 (Program Services), Chapter 93 (Youth Rights and Remedies), and Chapter 95 (Behavior Management and Youth Discipline).

The commission will determine whether the reasons for adopting the rules under review continue to exist. Any amendments to or repeals of rules proposed as a result of this rule review will be initiated under a separate proceeding and published in future issues of the *Texas Register*, in the Proposed Rules section.

Written comments relating to whether the reasons for adopting these rules continue to exist will be accepted for a 30-day period following publication of this notice in the *Texas Register*. Comments should be directed to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or by email to [erica.knutsen@tyc.state.tx.us](mailto:erica.knutsen@tyc.state.tx.us).

TRD-200904527

Toysha Martin

General Counsel

Texas Youth Commission

Filed: October 8, 2009

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# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.43(f)(1)(A)

## Standard Terms of Service

[Insert LSP Name] (Certificate No. \_\_\_\_)  
Provider of Last Resort (POLR) Residential Service

This Standard Terms of Service applies to residential customers receiving Provider of Last Resort (POLR) service from [insert LSP name] under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to current and future customer protection laws or rules as prescribed by local, state or federal authorities and to changes in applicable charges or transmission and distribution utility (TDU) rates. Each Standard Terms of Service will be given a unique version number for quick reference.

SPANISH LANGUAGE (IDIOMA ESPANOL) Si usted quiere obtener el mismo documento impreso detallando los Términos de Servicio en español comunicandose con nosotros al [insert toll-free number].

### 1. PRICE FOR BASIC FIRM SERVICE

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR service. Your LSP will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. The LSP rate for your electric service will be based on the formula detailed below.

Your rate for POLR service will be derived from the following formula:

$$\text{LSP rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{LSP customer charge} + \text{LSP energy charge}) / \text{kWh used}$$

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge shall be \$0.06 per kWh.
- (iii) LSP energy charge shall be the sum over the billing period of the actual hourly MCPEs for the customer multiplied by the level of kWh used, multiplied by 120%.
- (iv) "Actual hourly MCPE" is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.
- (v) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer's entire billing period.
- (vi) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the LSP energy charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

## 2. SECURITY

LSP shall not require a cash deposit if you are able to provide the LSP with a Credit Reference Letter that includes the following representations: 1) you have been a customer of any retail electric provider within the two years prior to your request for electric service or prior to your transfer to POLR service; 2) you are not delinquent in payment of any such electric service account; and 3) you were not late in paying a bill more than once during the last 12 consecutive months.

A residential customer shall also be deemed as having established satisfactory credit and shall not be required to pay a cash deposit if the customer possesses a satisfactory credit rating obtained through an accredited credit reporting agency.

A residential customer currently enrolled in the LITE UP Texas program may be eligible for additional deposit assistance. (See paragraph 3, under Cash Deposit.)

If these conditions do not apply, LSP may require a cash deposit unless you can demonstrate to the LSP any of the following prior to the due date of the cash deposit: 1) you are 65 years of age or older and you are not currently delinquent in payment of any electric service account; 2) you are a victim of family violence as defined by the Texas Family Code § 71.004, and as determined by a family violence center, or by treating medical personnel;\* or 3) you are medically indigent.\*\*

\*This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of the toll-free fax number listed below to LSP.

[Insert toll-free FAX Number]

\*\* To be considered medically indigent, the customer must demonstrate that the following criteria are met: the customer's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider, and either of the following must apply: (i) the customer or the customer's spouse has been certified by that person's physician (for the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social worker, state-licensed physical and occupational therapist, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. § 1395 et seq as being unable to perform three or more activities of daily living, as defined in Title 22, Texas Administrative Code, Section 218.2, or (ii) the customer's monthly out-of-pocket medical expenses exceed 20% of the household's gross income.

### a) CASH DEPOSIT

- 1) Your cash deposit, if required {POLR will insert exact conditions for charging a deposit}, may not exceed one fifth (1/5) of your estimated annual billing. You may also be required, in the future, to pay an additional cash deposit if you have been issued a disconnection notice within the last 12 months or if you have been a customer for 12 months and your billings are more than twice the amount estimated to determine your cash deposit. Instead of an additional cash deposit, you may pay the total amount due by the due date of the bill, provided you have not exercised this option in the previous 12 months.
- 2) LSP may require a deposit to be provided after 15 calendar days of service if you receive 10 days' notice that a deposit is required.
- 3) A customer who has applied for or is enrolled currently in LITE UP Texas (Low Income Telephone and Electric Utilities Program) may pay the initial cash deposit to LSP in two installments if the deposit exceeds \$50. The first installment shall not exceed one-tenth (1/10) of the estimated annual billing and shall be due within ten calendar days of LSP's issuance of the written notice requiring the cash deposit. The second installment for the remainder of the cash deposit shall be due within 40 calendar days of the issuance of the original written notice. For more information regarding LITE UP Texas, contact LSP or call toll-free 1-866-4-LITE-UP (1-866-454-8387) to determine eligibility or to receive an application.



- 4) A written letter of guarantee may be used in lieu of paying a cash deposit. The guarantor must become or remain a customer of the POLR for the term in which the guarantee is in effect. If the guarantor fails to become, or ceases to be, a customer of the POLR, the POLR may require the customer to pay the initial or additional cash deposit as a condition of continuing the contract for service.
- 5) Upon default by a residential customer, the guarantor of the customer's account shall be responsible for the unpaid balance of the account only up to the agreed amount in the letter of guarantee. The POLR shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed. The guarantor will have 16 calendar days from the date the notice is issued to pay the amount owed on the defaulted account. If the 16<sup>th</sup> day falls on a holiday or weekend, the due date shall be the next business day. The POLR may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill.
- 6) The POLR may initiate disconnection of service to the guarantor for nonpayment of the guaranteed amount within ten calendar days of issuance of a notice of disconnection.
- 7) Your service may be disconnected for failure to pay the required cash deposit within ten calendar days of issuance of a notice of disconnection of service.
- 8) A disconnection notice may be issued concurrently with either the written request for the cash deposit or current monthly bill for electric service. Disconnection means a physical interruption of electric service.
- 9) You will accrue interest on your cash deposit(s) with LSP. Each year in December, the PUCT establishes the interest rate LSP will apply to your cash deposit for the next calendar year.
- 10) Your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with LSP.
- 11) Your cash deposit and accrued interest will be refunded if you pay your bills for 12 consecutive months without having any late payments. A REP may refund the deposit to you through a bill credit.
- 12) The guarantee agreement will be terminated if you pay your bills for 12 consecutive months without your service being disconnected for nonpayment and without having more than two delinquent payments within the last 12 months.

### 3. BILLING

- 1) You will be billed for the amount of electricity that you consume.
- 2) Billing statements will reflect the total charges for POLR services provided by LSP.
- 3) Your bill will be due upon receipt and will be considered delinquent if it is not paid by the 16<sup>th</sup> day after issuance of the bill.
- 4) LSP offers deferred and level payment (also known as budget) plans. Budget plans will be reconciled quarterly. Please contact LSP at the 24-hour customer service number below for information about these options.
- 5) *[Insert toll-free phone Number]*

### 4. SERVICE CHARGES AND FEES

You will be subject to the following charges and fees in addition to the **PRICE FOR BASIC SERVICE** in section 1:

You must pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You must pay all applicable taxes and any fees charged by any governmental entity.

You must pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other residential customers}

<b><i>Service Charges and Fees</i></b>	<b><i>Amount</i></b>
<b>Account History charge</b> if you request and are provided a premise usage history for more than the most recent 12 months or if a 12-month history is requested more than once within a 12-month period. If you are a low-income customer, the first two premise usage histories provided on your behalf to an agency providing bill payment assistance shall not be counted in determining whether you are subject to an account history charge.	\$25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
<b>Disconnection charge</b> for disconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU ]
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment (in addition to any applicable disconnect or reconnect charges).	No charge
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
<b>Reconnection charge</b> for reconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Unmetered Guardlight/Security lighting charge</b> applies to existing guardlights.	[Insert applicable \$/kWh charge equivalent to 125% of former applicable PTB]
<b>Late fees</b> will be assessed on delinquent deferred payment arrangements. Deferred payment arrangements are delinquent if not paid by the date specified by the deferred payment plan.	5% assessed on the late deferred payment amount
<b>Return check charge</b> for each check returned for insufficient funds.	\$25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed to you.	[Insert pass through charge from TDU]
<b>Disconnection Reminder Notification</b> charge for notifying customer that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any means of communication appropriate for the customer.	\$5.00
LSP reserves the right to charge for court costs, legal fees, and other costs associated with collection of delinquent amounts.	
LSP reserves the right to charge for services requested by you that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDU.	

## 5. DISCONNECTION OF SERVICE

Disconnection means a physical interruption of electric service. Disconnection is subject to the rules of the PUCT.

- a) Your account will be considered delinquent if your monthly bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected ten calendar days after notice is issued.
- b) Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service.
- c) Service may not be reconnected by the LSP until all delinquent amounts and charges owed to LSP have been paid and credit has been re-established.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch of provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC SERVICE**, section 3 **BILLING** and section 4 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected.
- f) A disconnection notice may be issued concurrently with the written requests for the cash deposit.
- g) A disconnection notice may be issued concurrently with your bill.
- h) LSP cannot disconnect your electric service until you are a customer of the LSP.

## 6. CUSTOMER INFORMATION

You will be required to provide your social security number, a valid driver's license number, or other verifiable means of personal identification.

The TDU, any previous retail electric provider, or the Independent Organization may provide LSP information about your electric service, including, but not limited to: previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, and other names in which service has been provided, social security number, contact telephone number(s), driver's license, etc.

The LSP may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

## 7. LENGTH OF AGREEMENT

### **NOTICE: LSP CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP or unless you enter a level payment plan or deferred payment plan. If you decide to be placed on LSP's Level or Deferred Payment Plans, you will not be charged a penalty for canceling your service before the end of the term but you will be responsible for all outstanding amounts due, including Level and Deferred Payment Plan reconciliation amounts. If you decide to be placed on LSP's:

- a) Level (also known as Budget) Payment Plan, your term of service shall be six months from the date of the first monthly billing subsequent to being placed on the level payment plan. The term shall start on the date you enter the Level Payment Plan; or
- b) Deferred Payment Plan, your term of service shall be a minimum of three months or the length agreed to for making deferred payments, whichever is longer. The term shall start on the date you enter the Deferred Payment Plan.

## 8. CONTACT INFORMATION

Name of Provider:

Physical Address:

Customer Service: (toll free)

24-Hour Power Outages: Contact your local  
electricity delivery company [provide  
number]

Internet web-site:

Fax: (toll free)

You may contact LSP if you have a dispute concerning your bill or your service from LSP. You must provide, in writing, within ten business days of the invoice date, your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the POLR may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the LSP shall, for a period of 30 calendar days following LSP's receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days.

Complaints regarding your service may also be directed to the Public Utility Commission of Texas, 1-888-782-8477 (toll free).

## 9. LOW INCOME PAYMENT ASSISTANCE INFORMATION

Rate discounts and other assistance programs may be available for qualified low-income customers. For more information, contact LSP Customer Service or either of the following state agencies:

Texas Department of Housing and Consumer Affairs:

Public Utility Commission of Texas:

1-512-475-3800

1-888-782-8477 (toll free)

## 10. BILL PAYMENT METHODS

You may pay for your electric service by personal or cashier's check, money order, debit or credit card, electronic funds transfer, *[Insert if offered by LSP (optional): in cash through an agent authorized by the LSP]*, or automatic draft from your financial institution. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact LSP's Customer Service number to begin those options for bill payment at no cost.

If you have had two or more personal checks unpaid by your financial institution within the last 12 months, LSP may require all further payments for electric service to be by cash, cashier's check, money order or debit/credit card. If you pay by debit/credit card and your payment has been declined, rejected or charged back two or more times within the last 12 months, LSP will require all further payments to be by cash, cashier's check or money order.

The LSP shall offer a level or average payment plan if you are not currently delinquent.

## 11. FORCE MAJEURE

LSP shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDU.

## 12. LIMITATION OF LIABILITY

NEITHER YOU NOR THE LSP SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER, OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM. THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

## 12. REPRESENTATIONS AND WARRANTIES

LSP WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBSTANTIVE RULE 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

LSP MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 14. DISCRIMINATION

LSP will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

You have the right to cancel this agreement (Standard Terms of Service) for electric service without penalty or fee of any kind for a period of three federal business days after you have received the Standard Terms of Service. You may cancel your service and this agreement by calling the toll free 24-hour Customer Service number contained in this Standard Terms of Service or by contacting us through fax or e-mail. ***Cancellation of this agreement will result in disconnection of your service as provided in this agreement.***

Figure: 16 TAC §25.43(f)(1)(B)

## Standard Terms of Service

[Insert LSP Name] (Certificate No. \_\_\_\_\_)  
Provider of Last Resort (POLR) Small Non-Residential Service

This Standard Terms of Service (STOS) applies to small non-residential customers (i.e., less than 50 kW) receiving Provider of Last Resort (POLR) service from LSP under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to current and future customer protection laws or rules as prescribed by local, state or federal authorities and to changes in applicable charges or transmission and distribution utility (TDU) rates. Each Standard Terms of Service will be given a unique version number for quick reference.

SPANISH LANGUAGE (IDIOMA ESPANOL) Si usted quiere obtener el mismo documento impreso detallando los Términos de Servicio en español comunicandose con nosotros al [insert toll-free number].

### 1. PRICE FOR BASIC FIRM SERVICE.

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR service. Your LSP will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. The LSP rate for your electric service will be based on the formula detailed below. Non-recurring charges will be billed as they are incurred and are set out in section 3 **SERVICE CHARGES AND FEES** below.

Your rate for POLR service will be derived from the following formula:

$$\text{LSP rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{LSP customer charge} + \text{POLR demand charge} + \text{LSP energy charge}) / \text{kWh used}$$

Where:

- (i) Non-bypassable charges shall be all TDSP and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge shall be \$0.025 per kWh.
- (iii) LSP demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) LSP energy charge shall be the sum over the billing period of the actual hourly MCPEs, for the customer multiplied by the level of kWh used, multiplied by 125%, multiplied by the level of kWh used.
- (v) "Actual hourly MCPE" is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.
- (vi) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer's entire billing period.
- (vi) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the LSP energy

charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

## 2. BILLING

LSP has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame.

### CASH DEPOSIT

You will be billed monthly for your electric service after the scheduled monthly meter read date. The monthly billing period will be approximately 30 calendar days. Your bill will be due upon receipt and will be considered delinquent if it is not paid by the sixteenth (16th) day after issuance of the bill. Disconnection of service may result upon non-payment of a bill pursuant to section 4 **DISCONNECTION OF SERVICE**.

- 1) You may be required to make a cash deposit or other credit arrangement. {POLR will insert the conditions that will trigger a request for a deposit here} If your service is initiated with LSP and you are required to pay a cash deposit, you will be required to pay the cash deposit after LSP receives confirmation from the Registration Agent of the effective date you are to become a customer of LSP. Cash deposits required for POLR service shall be no higher than the estimated billing for a two-month period, including, where applicable, customer and non-bypassable charges, and energy and demand charges determined based on your two highest months of usage and demand in the most recent 12-month period.
- 2) If 12 months of historical usage data is not available, LSP in its sole judgment may develop reasonable good faith estimates to determine your cash deposit amount. Estimates will be based on key energy determinants and electric equipment, including, but not limited to: square footage, HVAC size and type, type of business, hours of operation, standard industry load factor assumptions, etc. Other non-discriminatory methods of determining creditworthiness may be used.
- 3) You may be required, in the future, to pay an additional cash deposit if you have been issued a disconnection notice within the last 12 months or if you have been a customer for 12 months and you have used more than twice the amount estimated to determine your cash deposit.
- 4) You will accrue interest on your cash deposit with LSP. Each year in December, the PUCT establishes the interest rate LSP will apply to your cash deposit for the next calendar year.
- 5) You may satisfy security requirements by providing LSP with an irrevocable letter of credit in the amount of the required cash deposit. The required security must be provided within ten calendar days after a notice is issued to you requesting a cash deposit.
- 6) If not previously returned to you, your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with LSP.
- 7) If your service is terminated prior to the regularly scheduled meter read date, the final bill for service may be calculated using the out-of-cycle meter readings. Final bills will not be prorated.
- 8) LSP may require payment of the cash deposit within ten calendar days of receiving confirmation from the Registration Agent of the effective date you become a customer of the POLR.
- 9) Your service may be disconnected if you fail to pay the required cash deposit within ten calendar days of issuance of a notice of disconnection of service.

### 3. SERVICE CHARGES AND FEES

You will be subject to the following charges and fees in addition to the **PRICE FOR BASIC FIRM SERVICE** in section 1. These fees will be billed for each premise. "Premise" herein shall mean the designated property or facilities and associated metered account identified by an Electric Service Identifier Number (ESI ID), which is a unique and permanent identifier assigned to each Premise.

You agree to pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You agree to pay all applicable Taxes and any fees charged by any governmental entity.

You agree to pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other Small Non-residential customers}

<i>Service Charges and Fees</i>	<b>Amount</b>
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$10.00
<b>Account History charge</b> if you request and are provided a premise usage history for more than the most recent 12 months or if a 12 month history is requested for more than once within a 12 month period.	\$25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
<b>Drawing on an irrevocable letter of credit.</b> Includes all of the activities required to present a drawing letter to customer's bank.	\$50.00 plus any fees imposed by financial institution
<b>Disconnection charge</b> for disconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
<b>Field Collection charge</b> for each trip to customer's premise to collect an amount that is past due when the customer requests the trip.	\$10.00/ESI ID
<b>Field Service Calls</b> for each trip to the customer's premise to provide non-competitive services such as billing and outage-related inquiries, as requested and approved by the customer after trip charges are disclosed. A two hour minimum will be billed for each customer requested Field Service Call and includes travel and incidental expenses with the Field Service Call as well as any TDU discretionary charges.	\$100.00/hour
<b>Reconnection charge</b> for reconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Guardlight/Security lighting charge</b> applies to existing guardlights or security lighting.	[Insert applicable \$/kWh charge equivalent to 125% of former applicable PTB]
<b>Master Contracts</b> <ul style="list-style-type: none"> <li>Set-up fee per new or transferred contract</li> <li>Additional fee per each unit placed on a master contract, added to an existing contract or transferred</li> </ul>	\$25.00 \$ 5.00



<b>Service Charges and Fees</b>	<b>Amount</b>
<b>Master Metered Facilities:</b> <b>Master Metered Tenant charge</b> for small non-residential 50 kW and below facilities may be assessed to recover costs associated with installing, maintaining, testing, reading or other costs incurred by POLR Provider for rendering electric service to tenants of master metered facilities.  <b>Tenant Notification charge</b> for each apartment unit to recover expenses incurred each time a tenant in a master metered facility is notified of either impending disconnection for nonpayment of the electric service or of actual disconnection.	[Insert pass through charge from TDSP]  \$25.00 to meet Subst. R. 25.483 minimum. \$10.00 per addn'l 5 notices per 50 units over 100 units
<b>Late fees</b> will be assessed on the seventeenth (17 <sup>th</sup> ) day after the bill issuance for all unpaid balances, including pay-in-advance billing. Payment arrangements are delinquent and will be assessed late fees if not paid by the date pursuant to a negotiated payment plan. <b>Late fees may not be assessed against a customer with a peak demand of less than 50 kW.</b>	5% assessed on the late payment amount
<b>Reread request charge</b> for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDSP]
<b>Processing fee</b> for renegotiation of a payment plan. This fee applies if you request renegotiations more than once in any 30-day period. In addition, you may be required to pay the appropriate amount to the Company to reconcile your account balance.	\$10.00
<b>Return check charge</b> for each check returned for insufficient funds. This charge will be imposed for each returned check (or for any bill payment method that results in a notice of insufficient funds from the customer's financial institution.)	\$25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at Customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed to you.	[Insert pass through charge from TDSP]
<b>Disconnection Reminder Notification</b> charge for notifying customers that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any means of communication appropriate for the customer.	\$5.00
LSP reserves the right to charge for incurred court costs, legal fees and miscellaneous costs associated with legal action as a result of maintaining customer accounts.	
LSP reserves the right to charge for services, requested by you, that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDU and billed to LSP.	

#### 4. DISCONNECTION OF SERVICE

Disconnection means a physical interruption of electric service. Disconnection is subject to the rules of the PUCT.

- Your account will be considered delinquent if your monthly bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected ten calendar days after notice is issued.
- Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service.
- Service may not be reconnected until all delinquent amounts and charges owed to LSP have been paid and credit has been re-established.

- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT Substantive Rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch of provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC FIRM SERVICE**, section 2 **BILLING** and section 4 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected or the date you switch electric service to another REP.
- f) A disconnection notice may be issued concurrently with the written requests for the cash deposit.
- g) A disconnection notice may be issued concurrently with your cash deposit billing.
- h) Your service may be disconnected for failure to pay an initial cash deposit bill.
- i) LSP cannot disconnect your electric service until you are a customer of the LSP.

## 5. CUSTOMER INFORMATION

You will be required to provide a Federal tax identification (I.D) number, a social security number, a valid driver's license number or other verifiable means of personal identification in order to allow verification of changes you request in services from LSP.

The TDU, any previous retail electric provider, or the Independent Organization may provide POLR Provider information about your electric service including, but not limited to: previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, and other names in which service has been provided, social security number, contact telephone number(s), tax ID or driver's license number, etc.

The LSP may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

## 6. LENGTH OF AGREEMENT

**NOTICE: LSP CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP.

## 7. CONTACT INFORMATION

Name of Provider:  
Physical Address:

Certificate Number:  
Customer Assistance:  
Contact hours  
our Power Outage: [provide number]  
Fax:  
Internet web-site:

You may contact LSP if you have a dispute concerning your bill or your service from LSP. You must provide, in writing, within ten business days of the invoice date your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the POLR may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the LSP shall, for a period of 30 calendar days following the LSP's receipt of the notice, pursue diligent, good faith efforts to

resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days. Complaints regarding your service may also be directed to the Public Utility Commission, 1-888-782-8477 (toll free).

## **8. BILL PAYMENT METHODS**

You may pay for your electric service by personal or cashier's check, money order, electronic funds transfer, [*Insert if offered by LSP (optional):* in cash through an agent authorized by the LSP], or automatic draft from your financial institution. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact LSP's Customer Service number to begin those options for bill payment at no cost. Regardless of the payment method you select, all payments must be made within (16 calendar days of bill issuance. If payments are not received by LSP by the end of the day on the due date, the bill will be considered delinquent and a late fee of 5% will be applied to all unpaid balances. Late fees may not be assessed against a customer with a peak demand of less than 50 kW.

If you have had two or more personal checks returned for insufficient funds within the last 12 months, LSP may require all further payments for electric service to be by cash, cashier's check, or money order.

## **9. FORCE MAJEURE**

LSP shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDU.

## **10. LIMITATION OF LIABILITY AND INDEMNITY**

NEITHER YOU NOR THE LSP SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM. THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

## **11. REPRESENTATIONS AND WARRANTIES**

LSP WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBSTANTIVE RULE 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

LSP MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 12. DISCRIMINATION

LSP will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

You have the right to cancel this agreement (Standard Terms of Service) for electric service without penalty or fee of any kind for a period of three federal business days after you have received the Standard Terms of Service. You may cancel your service and this agreement by calling the toll free Customer Service number during the hours stated in this Standard Terms of Service. Service may also be cancelled by toll-free fax or e-mail. ***Canceling this service agreement will result in disconnection of service if you have not made arrangements for alternative supply***

## Standard Terms of Service

[Insert LSP Name] (Certificate No. \_\_\_\_\_)  
Provider of Last Resort (POLR) Medium Non-Residential Service

This Standard Terms of Service (STOS) applies to medium non-residential customers (i.e., 50 kW or greater, but less than 1,000 kW (one Megawatt)) receiving Provider of Last Resort (POLR) service from LSP under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to changes in applicable charges and transmission and distribution utility (TDU) rates. Each Standard Terms of Service will be given a unique version number for quick reference.

SPANISH LANGUAGE (IDIOMA ESPAÑOL) Si usted quiere obtener el mismo documento impreso detallando los Términos de Servicio en español comunicandose con nosotros al [insert toll-free number].

### 1. PRICE FOR BASIC FIRM SERVICE.

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR service. Your LSP will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. The LSP rate for your electric service will be based on the formula detailed below. Non-recurring charges will be billed as they are incurred and are set out in section 3 **SERVICE CHARGES AND FEES** below.

Your rate for POLR service will be derived from the following formula:

$$\text{LSP rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{LSP customer charge} + \text{LSP demand charge} + \text{LSP energy charge}) / \text{kWh used}$$

Where:

- (i) Non-bypassable charges shall be all TDSP and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge shall be \$0.025 per kWh.
- (iii) LSP demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) LSP energy charge shall be the sum over the billing period of the actual hourly MCPEs, for the customer multiplied by the level of kWh used, multiplied by 125%, multiplied by the level of kWh used.
- (v) "Actual hourly MCPE" is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.
- (vi) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer's entire billing period.
- (vii) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the POLR

energy charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

## 2. SECURITY

LSP has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame.

### CASH DEPOSIT

You will be billed monthly for your electric service after the scheduled monthly meter read date. The monthly billing period will be approximately 30 calendar days. Your bill will be due upon receipt and will be considered delinquent if it is not paid by the sixteenth (16th) day after issuance of the bill. Disconnection of service may result upon non-payment of a bill pursuant to section 4 **DISCONNECTION OF SERVICE**.

- 1) You may be required to make a cash deposit or other credit arrangement. If your service is initiated with LSP and you are required to pay a cash deposit, you will be required to pay the cash deposit after LSP receives confirmation from the Registration Agent of the effective date you are to become a customer of LSP. Cash deposits required for POLR service shall be no higher than the estimated billing for a two-month period, including, where applicable, customer and non-bypassable charges, and energy and demand charges determined based on your two highest months of usage and demand in the most recent 12-month period. If 12 months of data are not available, the required two months cash deposit shall be determined by the longest available period less than 12 months.
- 2) If 12 months of historical usage data is not available, LSP in its sole judgment may develop reasonable good faith estimates to determine your cash deposit amount. Estimates will be based on key energy determinants and electric equipment, including, but not limited to: square footage, HVAC size and type, type of business, hours of operation, standard industry load factor assumptions, etc. Other non-discriminatory methods of determining credit worthiness may be used.
- 3) You may be required, in the future, to pay an additional cash deposit or if you have been issued a disconnection notice within the last 12 months or if you have been a customer for 12 months and you have used more than twice the amount estimated to determine your cash deposit.
- 4) You will accrue interest on your cash deposit with LSP. Each year in December, the PUCT establishes the interest rate LSP will apply to your cash deposit for the next calendar year.
- 5) You may satisfy security requirements by providing LSP with an irrevocable letter of credit in the amount of the required cash deposit. The required security must be provided within ten calendar days after a notice is issued to you requesting a cash deposit.
- 6) If not previously returned to you, your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with LSP.
- 7) If your service is terminated prior to the regularly scheduled meter read date, the final bill for service may be calculated using the out-of-cycle meter readings. Final bills will not be prorated.
- 8) LSP may require payment of the cash deposit within ten calendar days of receiving confirmation from the Registration Agent of the effective date you become a customer of the POLR.
- 9) Your service may be disconnected if you fail to pay the required cash deposit within ten calendar days of issuance of a notice of disconnection of service.

### 3. SERVICE CHARGES AND FEES

You will be subject to the following charges and fees in addition to the **PRICE FOR BASIC FIRM SERVICE** in section 1. These fees will be billed for each premise. "Premise" herein shall mean the designated property or facilities and associated metered account identified by an Electric Service Identifier Number (ESI ID), which is a unique and permanent identifier assigned to each Premise.

You must pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You must pay all applicable Taxes and any fees charged by any governmental entity.

You must pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other Medium Non-residential customers}

<i>Service Charges and Fees</i>	<b>Amount</b>
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$10.00
<b>Account History charge</b> if you request and are provided a premise usage history for more than the most recent 12 months or if a 12 month history is requested for more than once within a 12 month period.	\$25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
<b>Drawing on an irrevocable letter of credit.</b> Includes all of the activities required to present a drawing letter to customer's bank.	\$50.00 plus any fees imposed by financial institution
<b>Disconnection charge</b> for disconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
<b>Field Collection charge</b> for each trip to customer's premise to collect an amount that is past due when the customer requests the trip.	\$10.00/ESI ID
<b>Field Service Calls</b> for each trip to the customer's premise to provide non-competitive services such as billing and outage-related inquiries, as requested and approved by the customer after trip charges are disclosed. A two hour minimum will be billed for each customer requested Field Service Call and includes travel and incidental expenses with the Field Service Call as well as any TDU discretionary charges.	\$100.00/hour
<b>Reconnection charge</b> for reconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Guardlight/Security lighting charge</b> applies to existing guardlights or security lighting.	[Insert applicable \$/kWh charge equivalent to 125% of former applicable PTB]

<b><i>Service Charges and Fees</i></b>	<b>Amount</b>
<b>Master Contracts</b> <ul style="list-style-type: none"> <li>Set-up fee per new or transferred contract</li> <li>Additional fee per each unit placed on a master contract, added to an existing contract or transferred</li> </ul>	\$25.00 \$ 5.00
<b>Master Metered Facilities:</b> <b>Master Metered Tenant charge</b> for small non-residential 50 kW and below facilities may be assessed to recover costs associated with installing, maintaining, testing, reading or other costs incurred by POLR Provider for rendering electric service to tenants of master metered facilities.  <b>Tenant Notification charge</b> for each apartment unit to recover expenses incurred each time a tenant in a master metered facility is notified of either impending disconnection for nonpayment of the electric service or of actual disconnection.	[Insert pass through charge from TDU]  \$25.00 to meet Subst. R. 25.483 minimum. \$10.00 per addn'l 5 notices per 50 units over 100 units
<b>Late fees</b> will be assessed on the seventeenth (17 <sup>th</sup> ) day after the bill issuance for all unpaid balances, including pay-in-advance billing. Payment arrangements are delinquent and will be assessed late fees if not paid by the date pursuant to a negotiated payment plan.	5% assessed on the late payment amount
<b>Reread request charge</b> for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDU]
<b>Processing fee</b> for renegotiation of a payment plan. This fee applies if you request renegotiations more than once in any 30-day period. In addition, you may be required to pay the appropriate amount to the Company to reconcile your account balance.	\$10.00
<b>Return check charge</b> for each check returned for insufficient funds. This charge will be imposed for each returned check (or for any bill payment method that results in a notice of insufficient funds from the customer's financial institution.)	\$25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at Customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed to you.	[Insert pass through charge from TDU]
<b>Disconnection Reminder Notification charge</b> for notifying customers that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any means of communication appropriate for the customer.	\$5.00
LSP reserves the right to charge for incurred court costs, legal fees and miscellaneous costs associated with legal action as a result of maintaining customer accounts.	
LSP reserves the right to charge for services, requested by you, that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDU and billed to LSP.	



#### 4. DISCONNECTION OF SERVICE

Disconnection means a physical interruption of electric service.

- a) Your account will be considered delinquent if your monthly bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected ten calendar days after notice is issued.
- b) Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service.
- c) Service may not be reconnected until all delinquent amounts and charges owned to LSP have been paid and credit has been re-established.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT Rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch of provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC FIRM SERVICE**, section 2 **SECURITY AND BILLING** and section 3 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected or the date you switch electric service to another REP.
- f) A disconnection notice may be issued concurrently with the written requests for the cash deposit.
- g) Your service may be disconnected for failure to pay an initial cash deposit bill.
- h) LSP cannot disconnect your electric service until you are a customer of the LSP.

#### 5. CUSTOMER INFORMATION

You will be required to provide a Federal tax identification (I.D) number, a social security number, a valid driver's license number or other verifiable means of personal identification in order to allow verification of changes you request in services from LSP.

The TDU, any previous retail electric provider, or the Independent Organization may provide to LSP information about your electric service, including, but not limited to: previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, and other names in which service has been provided, social security number, contact telephone number(s), tax ID or driver's license number, etc.

The LSP may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

#### 6. LENGTH OF AGREEMENT

**NOTICE: LSP CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP.

## 7. WAIVER OF CERTAIN CUSTOMER PROTECTION RULES

The Customer Protection Rule provisions contained within Subchapter R of this chapter shall be deemed waived by the execution of this Standard Terms of Service, except for the following:

- a) §25.481, relating to Unauthorized Charges;
- b) §25.485(a)-(b), relating to Customer Access and Complaint Handling; and
- c) §25.495, relating to Unauthorized Change of Retail Electric Provider.

## 8. CONTACT INFORMATION

Name of Provider:  
Physical Address:

Certificate Number:  
Customer Assistance:  
Contact hours  
24-Hour Power Outage:  
[provide number]  
Fax:  
Internet web-site:

You may contact LSP if you have a dispute concerning your bill or your service from LSP. You must provide, in writing, within ten business days of the invoice date your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the POLR may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the LSP shall, for a period of 30 calendar days following the LSP's receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days. Complaints regarding your service may also be directed to the Public Utility Commission, 1-888-782-8477 (toll free).

## 9. BILL PAYMENT METHODS

You may pay for your electric service by personal or cashier's check, money order, electronic funds transfer, [*Insert if offered by LSP (optional):* in cash through an agent authorized by the LSP], or automatic draft from your financial institution. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact LSP's Customer Service number to begin those options for bill payment at no cost. Regardless of the payment method you select, all payments must be made within (16 calendar days of bill issuance. If payments are not received by LSP by the end of the day on the due date, the bill will be considered delinquent and a late fee of 5% will be applied to all unpaid balances including pay-in-advance. Late fees may not be assessed against a customer with a peak demand of less than 50 kW.

If you have had two or more personal checks returned for insufficient funds within the last 12 months, LSP may require all further payments for electric service to be by cash, cashier's check, or money order.

## 10. FORCE MAJEURE

LSP shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDU.

**11. LIMITATION OF LIABILITY AND INDEMNITY**

NEITHER YOU NOR THE POLR PROVIDER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

**12. REPRESENTATIONS AND WARRANTIES**

LSP WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBSTANTIVE RULE 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

LSP MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**13. DISCRIMINATION**

LSP will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

<p>You have the right to cancel this agreement (Standard Terms of Service) for electric service without penalty or fee of any kind for a period of three federal business days after you have received the Standard Terms of Service. You may cancel your service and this agreement by calling the toll free Customer Service number during the hours stated in this Standard Terms of Service. Service may also be cancelled by toll-free fax or e-mail. <b><i>Canceling this service agreement will result in disconnection of service if you have not made arrangements for alternative supply</i></b></p>
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**Figure: 16 TAC §25.43(f)(1)(D)**

## **Standard Terms of Service**

**[Insert LSP Name] (Certificate No. \_\_\_\_)**

**Provider of Last Resort (POLR) Large Non-Residential Service (> = One Megawatt)**

This Standard Terms of Service applies to Large Non-Residential customers receiving Provider of Last Resort (POLR) service from pursuant to Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to changes in applicable charges and or transmission and distribution utility (TDU) rates. Each Standard Terms of Service will be given a unique version number for quick reference.

### **1. PRICE FOR BASIC FIRM SERVICE.**

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR Service. Your LSP will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market.

The price for your electric service from LSP will be derived from the following formula:

$$\text{LSP rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{LSP customer charge} + \text{LSP demand charge} + \text{LSP energy charge}) / \text{kWh used}$$

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge shall be \$2,897.00 per month.
- (iii) LSP demand charge shall be \$6.00 per kW, per month.
- (iv) LSP energy charge shall be the appropriate MCPE, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kWh used. The MCPE shall have a floor of \$7.25 per MWH.

Non-recurring charges will be billed as they are incurred and are set out in section 3 **SERVICE CHARGES AND FEES** below.

### **2. SECURITY**

LSP has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame.

#### **CASH DEPOSIT**

You will be billed monthly for your electric service after the scheduled monthly meter read date. The monthly billing period will be approximately 30 calendar days. Your bill will be due upon receipt and will be considered delinquent if it is not paid by the sixteenth (16<sup>th</sup>) day after issuance of the bill. The late payment fee (5%) will be assessed on the seventeenth (17<sup>th</sup>) day after the bill issuance for all unpaid balances. Disconnection of service may result upon non-payment of a bill pursuant to section 4 **DISCONNECTION OF SERVICE**.

- 1) You may be required to make a cash deposit or other credit arrangement. If your service is initiated with LSP, you will be required to pay a cash deposit or letter of credit after LSP receives confirmation from the Registration Agent of the effective date you are to become a customer of LSP. Cash deposits required for POLR service shall be no higher than the estimated billing for a three-month period, including, where applicable, customer and non-bypassable charges, and energy and demand charges determined based on your three highest months of usage and demand during the most recent 12-month period.
- 2) If 12 months of historical usage data is not available, LSP in its sole judgment may develop reasonable good faith estimates to determine your cash deposit amount. Estimates will be based on key energy determinants and electric equipment, including, but not limited to: square footage, HVAC type and size, type of business, hours of operation, standard industry load factor assumptions, etc. Other non-discriminatory methods of determining creditworthiness may be used.
- 3) You may also be required, in the future, to pay an additional cash deposit if you have been issued a disconnection notice or if you have been a customer for three months and you have used more than the amount estimated to determine your initial cash deposit.
- 4) You will accrue interest on your deposit with LSP. Each year in December, the PUCT establishes the interest rate the LSP will apply to your cash deposit for the next calendar year.
- 5) You may satisfy security requirements by providing LSP with a surety bond or an irrevocable letter of credit in the amount of the required cash deposit. The surety bond must be approved by the LSP. The required security must be provided within three calendar days after a notice is issued to you requesting a cash deposit.
- 6) If not previously returned to you, your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with LSP.
- 7) If your service is terminated prior to the regularly scheduled meter read date, the energy usage for the final bills may be calculated using the out-of-cycle meter readings and will include all charges defined in section 1. **Price for Basic Firm Service.**
- 8) LSP may require payment of the cash deposit within three calendar days of receiving confirmation from the Registration Agent of the effective date you become a customer of the POLR.
- 9) Your service may be disconnected if you fail to pay the required cash deposit within three calendar days of issuance of a notice of disconnection of service.

### 3. SERVICE CHARGES AND FEES

You will be subject to the following charges and fees in addition to the rates for service prescribed in section 1 **PRICE FOR BASIC FIRM SERVICE.** These fees will be billed for each premise. "Premise" herein shall mean the designated property or facilities and associated metered account identified by an Electric Service Identifier Number (ESI ID), which is a unique and permanent identifier assigned to each service point.

You must pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You must to pay all applicable taxes and any fees charged by any governmental entity.

You must pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other Large Non-Residential customers}

<b>Service Charges and Fees</b>	<b>Amount</b>
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$ 50.00
<b>Account History charge</b> if you request and are provided a service point usage history for more than the most recent 12 months or if a 12-month history is requested more than once within a 12-month period.	\$ 25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts or drawing on your letter of credit.	\$15.00
<b>Drawing on irrevocable letter of credit</b> includes all of the activities required to present a drawing letter to your bank.	\$150.00 plus any fees imposed by financial institution
<b>Disconnection charge</b> for disconnection of service pursuant to TDSP's tariffs, including charges that may be assessed by the TDU for scheduling a disconnection that is canceled.	[Insert pass through charge from TDU]
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
<b>Field Collection charge</b> for each trip to a customer's premise to collect an amount that is past due when the customer requests the trip.	\$10.00 / ESI ID
<b>Field Service Calls</b> for each trip to the customer's premise to provide non-competitive services such as billing and outage-related inquiries, as requested and approved by the customer after trip charges are disclosed. A four hour minimum will be billed for each customer requested Field Service Call and includes travel and incidental expenses with the field service call.	\$200.00/hour
<b>Late fees</b> will be assessed on the seventeenth (17 <sup>th</sup> ) day after the bill issuance for all unpaid balances, including pay-in-advance billing. Payment arrangements are delinquent and will be assessed a late fee if not paid by the date pursuant to a negotiated payment plan.	5% assessed on the late payment amounts
<b>Master Contracts</b> <ul style="list-style-type: none"> <li>Set-up fee per new or transferred contract</li> <li>Additional fee per each unit placed on a master contract, added to an existing contract or transferred</li> </ul>	\$25.00 \$ 5.00
<b>Master Metered Facilities:</b> <b>Master Metered Tenant charge</b> for facilities may be assessed to recover costs associated with installing, maintaining, testing, reading or other costs incurred by LSP for rendering electric service to tenants of master metered facilities.  <b>Tenant Notification charge</b> for each apartment unit to recover expenses incurred each time a tenant in a master meter facility is notified of either impending disconnection for nonpayment of the electric service or of actual disconnection.	[Insert pass through charge from TDU]  \$25.00 to meet Subst. R. 25.483 minimum. \$10.00 per addn'l 5 notices per 50 units over 100 units
<b>Reread request charge</b> for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDU]
<b>Return check charge</b> for each check returned for insufficient funds. This charge will be imposed for each returned check (or for any bill payment method that results in a notice of insufficient funds from the customer's financial institution.)	\$ 25.00

<b>Service Charges and Fees</b>	<b>Amount</b>
<b>Unmetered Guardlight/Security lighting charge</b> applies to existing guardlights or security lighting.	[Insert applicable \$/kWh charge equivalent to 125% of former applicable tariff for unmetered guardlight/security lighting]
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed.	[Insert pass through charge from TDU]
<b>Disconnection Reminder Notification</b> charge for notifying customers that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any other means of communication appropriate for the customer.	\$5.00
LSP reserves the right to charge for court costs, legal fees and other costs associated with collection of delinquent amounts and miscellaneous legal costs associated with maintaining the account.	
LSP reserves the right to charge for services, requested by you, that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDU and billed to LSP.	

#### 4. DISCONNECTION OF SERVICE

Disconnection means a physical interruption of electric service.

- a) Your account will be considered delinquent if payment for your monthly bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected three calendar days after notice is issued.
- b) Your service may be disconnected for failure to pay cash deposit. Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service.
- c) Service may not be reconnected until all delinquent amounts and charges owed to LSP have been paid and credit has been re-established. Upon receipt of all amounts and charges owed service may not be reconnected immediately and is dependent upon TDU scheduling.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT Rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch to the new provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC SERVICE**, section 2 **SECURITY AND BILLING** and section 3 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected or the date you switch electric service to another REP.
- f) A disconnection notice may be issued concurrently with the written requests for either the cash deposit or with a pay-in-advance in lieu of cash deposit billing.
- g) Your service may be disconnected for failure to pay an initial cash deposit bill.
- h) LSP cannot disconnect your electric service until you are a customer of the LSP.

## 5. CUSTOMER INFORMATION

You will be required to provide a legal name, Federal tax identification (I.D.) number, a social security number, a valid driver's license number or other verifiable means of identification in order to allow verification of changes you request in services from LSP.

The TDU, any previous retail electric provider, or the Independent Organization may provide information to LSP about your electric service, including but not limited to previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, other names in which service has been provided, social security number, contact telephone number(s), tax ID or driver's license number, etc.

The LSP at its discretion may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

## 6. LENGTH OF AGREEMENT

**NOTICE: LSP CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP.

## 7. CONTACT INFORMATION

Name of Provider:  
Physical Address:

Certificate Number:  
Customer Assistance:  
Contact hours:  
24-Hour Power Outage:  
[provide number]  
Fax:  
Internet web-site:

You may contact LSP if you have a dispute concerning your bill or your service from LSP. You must provide, in writing, within ten business days of the invoice date your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the POLR may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the LSP shall, for a period of 30 calendar days following the LSP's receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days.

Complaints regarding your service may also be directed to the Public Utility Commission, 1-888-782-8477 (toll free). Complaints directed to the Public Utility Commission do not relieve customer's obligation to pay in full within 16 calendar days .

## 8. BILL PAYMENT METHODS

You may pay for your electric service by personal or cashier's check, money order, electronic funds transfer, automatic draft from your financial institution or in cash through a company authorized agent. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact LSP' Customer Service number above to begin those options for bill payment at no cost. Regardless of the payment method you select, all payments must be made within 16 calendar days of bill issuance. If LSP does not receive payments by the end of



the day on the due date, the bill will be considered delinquent and a late fee of 5% will be applied to all unpaid balances.

If you have had two or more personal checks returned for insufficient funds within the past 12 months, LSP may require all further payments for electric service to be by cash, cashier's check or money order.

#### **9. FORCE MAJEURE**

LSP shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDU.

#### **10. LIMITATION OF LIABILITY AND INDEMNITY**

NEITHER YOU NOR THE LSP SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM. THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

#### **11 REPRESENTATIONS AND WARRANTIES**

LSP WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBST. R. 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

LSP MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **12. DISCRIMINATION**

LSP will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

You have the right to cancel this agreement (Standard Terms of Service) for electric service without penalty or fee of any kind for a period of three federal business days after you have received the Standard Terms of Service. You may cancel your service and this agreement by calling the toll free Customer Service number during the hours stated in this Standard Terms of Service. Service may also be cancelled by toll-free fax or e-mail. ***Canceling this service agreement will result in disconnection of service if you have not made arrangements for alternative supply.***

Figure: 16 TAC §402.411(e)

<b>Number of Days Late</b>	<b>Percentage of Estimated License Fee</b>
1-14	10%
15-28	20%
29-42	30%
43-56	40%
57-60	50%

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas State Affordable Housing Corporation

### Draft Policies and 2010 Private Activity Bond Program Request for Proposals

The Texas State Affordable Housing Corporation ("TSAHC") is a self-supporting, not-for-profit organization that serves the housing needs of low, very low and extremely low-income Texans who do not have comparable housing options through conventional financial channels.

TSAHC's Board approved the publication of drafts for the 2010 Multifamily 501(C)(3) Bond Program, and the 2010 Private Activity Bond Program Request for Proposals to our website at: <http://www.tsahc.org/multi>.

The Corporation is accepting written comments on the drafts until November 5, 2009. We will also welcome public comments at our November 13, 2009 Board meeting. Comments should be sent in writing to:

David Danenfelzer

Manager of Development Finance

Texas State Affordable Housing Corporation

P.O. Box 12637

Austin, Texas 78711

[ddanenfelzer@tsahc.org](mailto:ddanenfelzer@tsahc.org)

TRD-200904599

David Long

President

Texas State Affordable Housing Corporation

Filed: October 12, 2009



## Automobile Burglary and Theft Prevention Authority

### Request for Proposals

### Request for Applications under the Automobile Burglary and Theft Prevention Authority Fund

#### Notice of Invitation for Applications:

The Automobile Burglary and Theft Prevention Authority is soliciting applications for grants to be awarded for projects under the Automobile Burglary and Theft Prevention Authority (ABTPA) Fund. This grant cycle will be one year in duration, and will begin on September 1, 2010. One or more of the following types of projects may be awarded, depending on the availability of funds:

**Law Enforcement/Detection/Apprehension Projects**, to establish motor vehicle burglary and theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, precinct commissioner, general, or home rule cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding.

**Prosecution/Adjudication/Conviction Projects**, to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with motor vehicle burglary and theft offenses.

**Prevention, Anti-Theft Devices and Automobile Registration Projects**, to test experimental equipment which is considered to be designed for auto theft deterrence and registration of vehicles in the Texas Help End Auto Theft (H.E.A.T.) Program.

**Reduction of the Sale of Stolen Vehicles or Parts Projects**, to provide vehicle identification number labeling, including component part labeling and etching methods designed to deter the sale of stolen vehicles or parts.

**Public Awareness and Crime Prevention/Education/Information Projects**, to provide education and specialized training to law enforcement officers in auto burglary and theft prevention procedures, provide information linkages between state law enforcement agencies on auto theft crimes, and develop a public information and education program on theft prevention measures.

#### Eligible Applicants:

State agencies, local general-purpose units of government, independent school districts, nonprofit, and for profit organizations are eligible to apply for grants for automobile burglary and theft prevention assistance projects. Nonprofit and profit organizations shall be required to provide with their grant applications sufficient documentation to evaluate the credibility and the community support of the organization and the viability of the organization's existing activities in the context of providing automobile burglary and theft prevention assistance.

#### Contact Person:

Detailed specifications, including selection process and schedule for workshops for applicants will be made available through ABTPA. Copies of the Administrative Guide and the application can be found at [www.txwatchyourcar.com](http://www.txwatchyourcar.com).

Contact Charles Caldwell, ABTPA Director, Texas Automobile Burglary and Theft Prevention Authority, (512) 374-5101.

#### Application Workshops:

A **mandatory** workshop for all applicants that wish to apply for the Texas Automobile Burglary and Theft Prevention Grant funds with at least **one (1)** representative has been selected to be held:

**Monday, January 11-13, 2010, Austin, Texas**, 8:00 a.m. - 5:00 p.m., Holiday Inn Austin Town Lake, 20 North IH-35, Austin, Texas 78701, 1-888-615-0509, *Group Code ABTPA Grant Workshop*.

Attendees are responsible for making individual hotel reservations. Registration for the workshops must be done on the ABTPA Web site at [www.txwatchyourcar.com](http://www.txwatchyourcar.com).

#### Application Deadline and Submission Requirements:

Applications shall be submitted online using the EGrants System or hardcopy mailed to the Automobile Burglary and Theft Prevention Authority. The Authority must receive submitted applications by 5:00 p.m., Friday, May 7, 2010 or postmarked by May 7, 2010.

Each Application must:

1. Include all signed certifications and signature pages.
2. If submitting hardcopy, application can be mailed or delivered to:

**Texas Automobile Burglary and Theft Prevention Authority**

4000 Jackson Avenue

Austin, Texas 78731

3. Submit the **original copy** of the proposal.
4. Facsimile transmissions will not be accepted.

If mailed, applications must be marked "Personal and Confidential" and addressed to the contact person listed above. If delivered, please leave application with the contact person (or designee) at the address listed.

**Selection Process:**

Applications will be selected according to §§57.2, 57.4, 57.7, and 57.14, as published in Title 43 Chapter 57, Texas Administrative Code. Grant award decisions by ABTPA are final and not subject to judicial review. Grants will be awarded on or before September 1, 2010.

TRD-200904530

Charles Caldwell

Director

Automobile Burglary and Theft Prevention Authority

Filed: October 8, 2009



## Brazos Valley Council of Governments

### Request for Proposals

Purchasing Solutions Alliance (PSA), acting on behalf of the Brazos Valley Council of Governments (BVCOG) and its Members, is soliciting proposals from qualified Vendors to supply and deliver Auto Parts, Shop Equipment and Services to PSA Members. Sealed proposals for RFP No. 09-102 will be accepted until 2:00 p.m., Tuesday, November 17, 2009. Proposal requirements and specifications is on file and may be obtained at the offices of Purchasing Solutions Alliance (a program of the Brazos Valley Council of Governments) located at 3991 East 29th St., Bryan, Texas 77802. For information regarding the RFP, contact Michael Lucas, Senior Contract Officer at (979) 595-2801 Extension 2035 or by email at [mlucas@bvcog.org](mailto:mlucas@bvcog.org).

PSA reserves the right to reject any or all proposals and to waive informalities and irregularities.

TRD-200904635

Tom Wilkinson

Executive Director

Brazos Valley Council of Governments

Filed: October 14, 2009



## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the fol-

lowing project(s) during the period of October 2, 2009, through October 8, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on October 14, 2009. The public comment period for this project will close at 5:00 p.m. on November 13, 2009.

### FEDERAL AGENCY ACTIONS:

**Applicant: Renew Blue, Inc.;** Location: The project is located in the Gulf of Mexico, State Tract 390, near Freeport, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 269820; Northing: 3196216. Project Description: The applicant proposes to install a desalination and electrical generation demonstration project in the Gulf of Mexico. The demonstration project will include the placement of 18 SEADOG pumps in approximately 25-foot-deep water and a 58-foot by 130-foot platform constructed over the SEADOG pumps to provide a location for the water tank, man house and water wheel house. The overall footprint will be 144 feet by 72 feet. The project will generate the necessary electricity to desalinate sea water. Waste water and brine will be discharged back into the Gulf of Mexico per applicable regulations. The purpose of the project is a demonstration of new technology. No electricity or drinking water will be provided for consumption at this time. CCC Project No.: 09-0249-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00424 Rev. is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Blackberry Island, LP;** Location: The project is located adjacent to the Gulf Intracoastal Waterway (GIWW), approximately 0.3 mile south of State Highway 185 at the intersection of Second and Water Streets, in Port O'Connor, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port O'Connor, Texas. Approximate Latitude/Longitude Coordinates in NAD 83: 28.4427N, -96.4036W. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 754,306; Northing: 3,148,790. Project Description: The applicant proposes to place fill material into 0.93 acre of open water, dredge 1.02 acres of open water, and to excavate 0.83 acre of uplands to create 0.83 acre open water during the construction of Caracol at Port O'Connor Condominium and Marina Development (Project). The Project is located on two tracts of land totaling 6.88 acres that have been previously developed adjacent to the GIWW. Currently, each tract has separate boat basins that were used by their previous landowners. The applicant proposes to combine the facilities and upgrade the existing marinas for the Project. CCC Project No.: 10-0001-F1. Type of Application: U.S.A.C.E. permit application #SWG-2006-01919 Rev. is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: BOPCO, LP;** Location: The project is located in the north-west portion of Corpus Christi Bay, adjacent to and east of US Highway 181, and south of Portland, in San Patricio County, Texas. The project is located on the U.S.G.S. quadrangle map entitled: Gregory, Texas at approximate UTM coordinates in NAD 83 (meters): Zone 14; Easting: 664610; Northing: 3084069. Project Description: The applicant proposes to expand the size of an existing well pad, near Sunset Lake in Portland, Texas. A similar version of this project was previously placed on public notice on 18 June 2007; however, that permit application was withdrawn without prejudice by the U.S. Army Corps of Engineers (Corps) due to inactivity from the applicant. Subsequently,

the applicant has encountered land ownership issues which have necessitated a change in the project design and permit application. The purpose of the project is to serve as a stable base of sufficient size for drilling and producing operations to extract petroleum products from subsurface leases and provide a base to directionally drill a pipeline under Sunset Lake. CCC Project No.: 10-0002-F1. Type of Application: U.S.A.C.E. permit application # SWG-2007-00538 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or [tammy.brooks@glo.state.tx.us](mailto:tammy.brooks@glo.state.tx.us). Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200904626

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council

Filed: October 14, 2009



## Comptroller of Public Accounts

### Notice of Request for Proposals

Pursuant to Chapters 403; 2254, Subchapter A; and 2305, §2305.036, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces its Request for Proposals (RFP #195e) and invites proposals for technical training and certification in renewable energy fields from community and junior colleges for the Energy Education Program (Program). The Comptroller reserves the right to award more than one contract under the RFP. If a contract award is made under the terms of this RFP, Contractor will be expected to begin performance of the contract on or about January 8, 2010, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, October 23, 2009, after 10:00 a.m. Central Zone Time (CZT) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. CZT on Friday, October 23, 2009.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. CZT on Friday, October 30, 2009. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On

or about Friday, November 6, 2009, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CZT, on Friday, November 13, 2009. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying time receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - October 23, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - October 30, 2009, 2:00 p.m. CZT; Official Responses to Questions posted - November 6, 2009; Proposals Due - November 13, 2009, 2:00 p.m. CZT; Contract Execution - January 8, 2010, or as soon thereafter as practical; Commencement of Services - January 8, 2010.

TRD-200904636

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: October 14, 2009



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/19/09 - 10/25/09 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/19/09 - 10/25/09 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200904610

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 13, 2009



## State Board for Educator Certification

### Correction of Error

The State Board for Educator Certification adopted amendments to 19 TAC §233.15, concerning Languages Other Than English, in the October 16, 2009, issue of the *Texas Register* (34 TexReg 7199). Due to an error in the document submission, the word "Japanese" was replaced

by the word "Chinese" in one instance in subsection (f). The correct wording is as follows:

"(f) Japanese: Early Childhood-Grade 12. The Japanese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Japanese: Early Childhood-Grade 12 certificate is eligible to teach Japanese in a prekindergarten program, in kindergarten, and in Grades 1-12."

TRD-200904631

## **Commission on State Emergency Communications**

### **Proposed Annual Review of §255.4**

The Commission on State Emergency Communications (CSEC) is conducting its annual review of the definitions of the terms "local exchange access line and equivalent local exchange access line" as required by Health and Safety Code §771.063(c). CSEC has initially determined that the current definitions sufficiently define the terms.

Persons wishing to comment on CSEC's initial determination or recommend amendments to §255.4 may do so by submitting written comments within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, at The Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305.6937; or by email to csecinfo@csec.state.tx.us. Comments should include in the subject line "Comments on CSEC's Annual Review of §255.4."

TRD-200904618

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: October 13, 2009

## **Employees Retirement System of Texas**

### **Revised Notice - Request for Proposals to Conduct Eligibility Audits**

This Notice takes place of the previous Notice published on October 2, 2009, issue of the *Texas Register* (34 TexReg 6477), TRD 200904213.

In accordance with §1551.055 and §1551.062 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is soliciting proposals from qualified auditing firms to perform dependent eligibility audits of the participants enrolled in the health programs of the Texas Employees Group Benefits Program ("GBP"). A qualified provider of auditing services ("Auditor") shall supply the level of services required in the Request for Proposal ("RFP") and meet other requirements that are in the best interest of ERS, the GBP health programs, their participants, or the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by and satisfactory to ERS.

As provided in Chapter 1551 of the Texas Insurance Code, ERS is the administrator for the GBP which provides health benefits to over 264,000 state agency and certain higher education employees, retirees, and approximately 198,000 dependents. ERS is responsible for contracting with health carriers and third party administrators to provide coverage for GBP participants or administer such coverage throughout the state of Texas. The services requested and described in the RFP have been broken into two separate scopes of audit services: 1) an initial 100% dependent eligibility audit, and 2) an ongoing annual audit for newly added dependents enrolled in the GBP health programs. Qualified Auditors shall submit a proposal and bid response materials

to provide services for both audit scopes. An Auditor wishing to respond to this request shall meet the minimum requirements as well as those other evaluation criteria as more fully specified in Article II of the RFP. Each proposal will be evaluated individually and relative to the proposal of other qualified Auditors.

The RFP will be available in mid-November from ERS' website and will include documents for the Auditor's review and response. To access the secured portion of the RFP website, interested Auditors shall email their request to the attention of IVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall reflect the Auditor's legal name, street address, phone and fax numbers, and email address for the organization's direct point of contact. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP when the document is published on the Vendor portion of the ERS website.

General questions concerning the RFP and/or ancillary bid materials should be sent to the IVendor Mailbox where responses, if applicable, are updated frequently. The RFP will be discussed at a web conference scheduled for Wednesday, December 9, 2009, beginning at 2:00 p.m. (CT). Auditors interested in bidding are required to register for participation in the web conference no later than close of business on Monday, December 7, 2009, by emailing an acknowledgment to the IVendor Mailbox as referenced above.

To be eligible for consideration, all Auditors are required to submit a total of six (6) sets of the proposal in a sealed container. One (1) proposal shall be labeled as an "Original" and include a fully executed signature page and Business Associate Agreement, *signed in blue ink*, and without amendment or revision. Two (2) additional duplicates of the proposal, including all required exhibits, shall be provided in printed format. The remaining three (3) complete copies shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of financial materials) may be reflected on the CD-ROMs. All materials shall be executed as noted above and must be received by ERS no later than 12:00 Noon (CT) on Tuesday, December 22, 2009.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of ERS, the GBP health programs, their participants, or the state of Texas. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the GBP health programs, their participants or the state of Texas.

TRD-200904623

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: October 14, 2009

## **Texas Commission on Environmental Quality**

### **Agreed Orders**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an op-

portunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 23, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 23, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: A&S PETROLEUM, LLC dba Main Street Food Mart 2; DOCKET NUMBER: 2009-0939-PST-E; IDENTIFIER: RN102386711; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$2,574; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Richard C. Apodaca and Willie Jenkins; DOCKET NUMBER: 2009-0906-MSW-E; IDENTIFIER: RN105595235; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: inert material fill site; RULE VIOLATED: 30 TAC §330.15(c), by allowing unauthorized disposal of municipal solid waste (MSW); PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: O. B. Barnes; DOCKET NUMBER: 2009-0825-MSW-E; IDENTIFIER: RN105715346; LOCATION: Tulia, Swisher County; TYPE OF FACILITY: private ranch; RULE VIOLATED: 30 TAC §330.15(a)(1), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: Brazos Valley Construction, Incorporated; DOCKET NUMBER: 2008-1852-WQ-E; IDENTIFIER: RN105191167; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities to waters in the state and to develop and implement a storm water pollution prevention plan; PENALTY: \$4,750; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Duval County Conservation and Reclamation District; DOCKET NUMBER: 2009-1200-MWD-E; IDENTIFIER: RN104498597; LOCATION: Duval County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010067002, Operational Requirements Numbers 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; PENALTY: \$1,070; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2008-0923-AIR-E; IDENTIFIER: RN102926920; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air New Source Permit Number 6257E, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent the release of unauthorized air contaminants into the atmosphere; PENALTY: \$5,575; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Munir Nasah dba Express Mart; DOCKET NUMBER: 2009-0870-PST-E; IDENTIFIER: RN102454402; LOCATION: Waco, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated underground storage tank (UST) registration and self-certification form; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide proper release detection for the UST system; and 30 TAC §334.50(d)(9)(A)(ii) and the Code, §26.3475(c)(1), by failing to utilize a third party vendor to adequately complete statistical inventory reconciliation as a method of release detection; PENALTY: \$5,550; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Gulf Coast Waste Disposal Authority; DOCKET NUMBER: 2009-1076-AIR-E; IDENTIFIER: RN100219211; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: publicly owned treatment works; RULE VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 40782, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,350; Supplemental Environmental Project (SEP) offset amount of \$5,880 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Martina Kusniadi, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Kenneth Haddad and Maynard Haddad dba H & H Car Wash; DOCKET NUMBER: 2009-1105-PST-E; IDENTIFIER: RN100961473; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: car wash with three USTs; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection to all underground components of an UST system; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; and 30 TAC §334.50(d)(1)(B)(ii) and the



Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: \$6,105; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(10) COMPANY: HOOVER VALLEY COUNTRY STORE, LLC dba Hoover Valley Country Store; DOCKET NUMBER: 2009-0857-PST-E; IDENTIFIER: RN101383073; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b) and the Code, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; PENALTY: \$3,002; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 2800 South IH, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(11) COMPANY: Houston Refining, LP; DOCKET NUMBER: 2009-0181-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the TCEQ of a reportable emissions event within 24 hours of discovery; 30 TAC §116.715(a), Flexible Air Permit Number 2167, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$40,524; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Killeen Majestic Homes, Inc.; DOCKET NUMBER: 2009-0675-WQ-E; IDENTIFIER: RN105696611; LOCATION: Troy, Bell County; TYPE OF FACILITY: single-family residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$750; ENFORCEMENT COORDINATOR: Carlie Konkol, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Amanda Koller, Christina Koller, and Johnny Minze Koller dba Koller Dairy; DOCKET NUMBER: 2009-1020-AGR-E; IDENTIFIER: RN102792306; LOCATION: Camp County; TYPE OF FACILITY: dairy operation; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater from an animal feeding operation; PENALTY: \$770; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: City of Loraine; DOCKET NUMBER: 2009-1136-MWD-E; IDENTIFIER: RN101920973; LOCATION: Mitchell County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010430001, Operational Requirements Number 4, by failing to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater in the event of an electrical power failure by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater; PENALTY: \$2,675; ENFORCEMENT COORDINATOR: Carlie Konkol, (361) 825-3100; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: Mansfield Plumbing Products, LLC; DOCKET NUMBER: 2009-1004-AIR-E; IDENTIFIER: RN100217041; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: plastics manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), Federal Operating Permit (FOP) Number O-2316 Site-Wide Requirements Number 2, and THSC, §382.085(b), by failing to submit an annual compliance certification; 30 TAC §122.145(2)(B) and §122.146(1), FOP Number O-2626, General Terms and Conditions, and THSC, §382.085(b), by failing to submit an annual compliance certification and a semi-annual deviation report; PENALTY: \$12,500; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Melrose Water Supply Corporation; DOCKET NUMBER: 2009-1236-PWS-E; IDENTIFIER: RN102689346; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a free chlorine residual of at least 0.2 milligrams per liter (mg/L) throughout the distribution system; 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap at all residences and establishments; and 30 TAC §290.42(e)(4)(B), by failing to properly house the gas chlorine cylinders so that they are protected from adverse weather conditions and vandalism; PENALTY: \$3,540; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: City of Petersburg; DOCKET NUMBER: 2009-1256-MWD-E; IDENTIFIER: RN101453942; LOCATION: Hale County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TCEQ Permit Number 10246001, Special Provisions Number 3, by failing to operate and maintain the treatment facility to achieve optimum efficiency of treatment capacity; and 30 TAC §305.125(1) and TCEQ Permit Number 10246001, Special Provisions Number 7, by failing to maintain a minimum of two feet of freeboard in the holding ponds; PENALTY: \$2,300; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(18) COMPANY: Rohm and Haas Texas Incorporated; DOCKET NUMBER: 2009-0891-AIR-E; IDENTIFIER: RN100223205; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 723, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; SEP offset amount of \$4,000 applied to Houston Regional Monitoring Corporation - Houston Area Monitoring; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: RVR Investments, Inc. dba Kwik Way Food Store 201; DOCKET NUMBER: 2009-1559-PST-E; IDENTIFIER: RN101546232; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; and 30 TAC §334.8(c), by failing to submit initial/renewal UST registration and self-certification forms; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: SALIMA ROHEEN, INC. dba Willies Mart 3; DOCKET NUMBER: 2009-0788-PST-E; IDENTIFIER:

RN102382835; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; PENALTY: \$3,820; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Sam Rayburn Water, Inc.; DOCKET NUMBER: 2009-0160-PWS-E; IDENTIFIER: RN101189736, RN101274165; LOCATION: San Augustine County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4), THSC, §341.0315(c), and Agreed Order Docket Numbers 2004-1508-PWS-E and 2005-1228-PWS-E, Ordering Provision Number 2.a., by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes; and 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acids; PENALTY: \$4,475; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(22) COMPANY: Michael Sesso dba Sessos Country Market; DOCKET NUMBER: 2009-1213-PWS-E; IDENTIFIER: RN105507388; LOCATION: Val Verde County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(d)(2)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.41(c)(3)(A), by failing to submit a copy of the well completion data prior to placing the well into service as a PWS; 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that extends a minimum of 18 inches above the elevation of the floor of the pump room and a minimum of one inch above the sealing block; 30 TAC §290.46(d)(2)(A), by failing to maintain a free chlorine residual of 0.2 mg/L throughout the distribution system; 30 TAC §290.46(f)(3)(A)(ii)(III), by failing to provide water system records to commission personnel at time of the investigation; and 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual within the distribution system to a minimum accuracy of 0.1 mg/L; PENALTY: \$1,281; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(23) COMPANY: South Texas Aggregates, Inc.; DOCKET NUMBER: 2009-1287-AIR-E; IDENTIFIER: RN100850288; LOCATION: Maverick County; TYPE OF FACILITY: rock crushing plant; RULE VIOLATED: 30 TAC §101.201(e) and THSC, §382.085(b), by failing to notify the commission office for the region in which the regulated entity is located, and all appropriate local air pollution control agencies with jurisdiction within 24 hours of the discovery of an excess opacity event; and 30 TAC §116.615(2) and (9), Permit Number 39691, SC Numbers 5 and 7.a., and THSC, §382.085(b), by failing to operate rock crushing activities within permitted limits of 10% opacity for conveyors and screens and 15% opacity for the crusher; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: South Texas Aggregates, Inc.; DOCKET NUMBER: 2009-1346-EAQ-E; IDENTIFIER: RN103991352; LOCATION: Sabinal, Uvalde County; TYPE OF FACILITY: rock quarry; RULE VIOLATED: 30 TAC §213.4(j) and Water Pollution Abatement Plan (WPAP) Number 13-08051502 SC Number 6, by failing to receive approval of a modification to a WPAP prior to initiating installation activities of the hot mix plant; PENALTY: \$970; ENFORCEMENT

COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2009-0877-MWD-E; IDENTIFIER: RN102076296; LOCATION: Ellis County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0011959001, Monitoring and Reporting Requirements Number 7.c, by failing to submit noncompliance notifications for effluent violations that exceeded the permitted effluent limit by 40% or more; 30 TAC §305.125(17) and TPDES Permit Number WQ0011959001, Sludge Provisions, by failing to timely submit the annual sludge report; 30 TAC §305.125(1) and TPDES Permit Number WQ0011959001, Operational Requirements Number 5, by failing to provide a legible staff gauge to measure the effluent flow rate at Outfall 001; and 30 TAC §305.125(17) and TPDES Permit Number WQ0011959001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report; PENALTY: \$5,140; SEP offset amount of \$4,112 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2009-1062-PWS-E; IDENTIFIER: RN101204832; LOCATION: Nolan County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution coliform samples and failing to provide public notification of the failure to sample; PENALTY: \$10,855; SEP offset amount of \$10,855 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(27) COMPANY: City of Trinity; DOCKET NUMBER: 2009-0826-PWS-E; IDENTIFIER: RN101218105; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallons per minute per connection; 30 TAC §290.43(c)(4), by failing to provide all water storage tanks with a liquid level indicator; 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control easements; 30 TAC §290.44(h)(1)(A), by failing to install a backflow assembly or an air gap at all residential establishments; 30 TAC §290.46(n)(2), by failing to maintain an up-to-date map of the distribution system; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual tank inspection of the UST; 30 TAC §290.46(1), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(s)(1), by failing to calibrate the well meters once every three years; 30 TAC §290.43(c)(8), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practice at the facility; 30 TAC §290.42(e)(3)(A), by failing to provide disinfectant equipment with a capacity of at least 50% greater than the highest expected dosage; 30 TAC §290.41(c)(3)(l), by failing to provide a well site free from depressions, reverse grades, or areas too rough for proper ground maintenance; and 30 TAC §290.46(t), by failing to post a legible sign at each production, treatment, and storage facility that contains the name of the water supply and emergency telephone numbers where a responsible official can be contacted; PENALTY: \$7,930; SEP offset amount of \$6,344 applied to RC&D - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR:

Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(28) COMPANY: Trinity Bay Conservation District; DOCKET NUMBER: 2009-0878-MWD-E; IDENTIFIER: RN102077393; LOCATION: Winnie, Chambers County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010851001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for ammonia nitrogen; PENALTY: \$11,750; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(29) COMPANY: United States Department of the Army; DOCKET NUMBER: 2009-0553-EAQ-E; IDENTIFIER: RN101060101; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: training sites; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a modification to an Edwards Aquifer Contributing Zone Plan; PENALTY: \$1,507; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: Woden Independent School District; DOCKET NUMBER: 2009-0898-MWD-E; IDENTIFIER: RN102887213; LOCATION: Woden, Nacogdoches County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Special Provisions Number 8, by failing to prevent ponding or surfacing of the effluent; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Special Provisions Number 15, by failing to collect and submit for analysis annual soil samples for 2008; 30 TAC §305.125(1), TCEQ Permit Number WQ0014345001, Final Effluent Limitations and Monitoring Requirements A, and the Code, §26.121(a), by failing to comply with final effluent limitations for biochemical oxygen demand concentration; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Monitoring Requirements Number 3.b and Special Provisions Number 17, by failing to maintain records of the inspection dates for the sludge in each of the septic tanks; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Monitoring Requirements Number 3.b, by failing to retain at the facility all records of monitoring; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Monitoring Requirements Number 3.b and Special Provisions Number 16, by failing to retain records of the analysis of the irrigation effluent; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Monitoring Requirements Number 3.b and Special Provisions Number 18, by failing to maintain records of sludge removal; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Special Provisions Number 20, by failing to maintain records of all grease removed from the grease trap; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Special Provisions Number 8, by failing to record grass harvesting dates and weights in a log book kept on site; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Permit Conditions Number 4.a and Special Provisions Number 5, by failing to submit a summary submittal letter within 90 days from the date of permit issuance; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Final Effluent Limitations and Monitoring Requirements Number B, by failing to monitor pH once per month; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Special Provisions Number 7, by failing to comply with the effluent application rate of 0.07 gallons per square foot per day; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Monitoring Requirements Number 5, by failing to calibrate the effluent flow meter at least annually; and 30 TAC §305.125(1) and TCEQ Permit Number WQ0014345001, Monitoring Requirements Number 7.c, by failing to report in writing within five working days any effluent violation

that exceeded the permitted limit by more than 40%; PENALTY: \$14,225; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200904608

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 13, 2009



#### Notice of a Public Hearing on Proposed New Sections to 30 TAC Chapter 114 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed new sections to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles, and to the state implementation plan (SIP). These new sections are proposed under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking would implement Senate Bill 1759, 81st Legislature, 2009, Regular Session by adding the Texas Clean Fleet Program. This voluntary grant program is designed to encourage eligible entities to replace diesel-powered vehicles with alternative fuel or hybrid vehicles.

A public hearing on this proposal will be held in Austin on November 16, 2009 at 2:00 p.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments. Registration begins 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established to assure enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available for discussion 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing, who have special communication or other accommodation needs, should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

Comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2009-047-114-EN. The comment period closes November 23, 2009. To view rules, please visit [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information or questions concerning this proposal, please contact Stephen Dayton, Implementation Grants Section at (512) 239-6824.

TRD-200904553

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 9, 2009

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## Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapter 114

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution From Motor Vehicles, and to the state implementation plan (SIP). These revisions are proposed under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking would implement House Bill 1796, 81st Legislature, 2009, by adding a definition for stationary engines and clarifying requirements for projects involving non-road equipment used for natural gas recovery purposes.

A public hearing on this proposal will be held in Austin on November 16, 2009 at 10:00 a.m. in Building E, Room 201 at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments. Registration begins 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established to assure enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available for discussion 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

Comments may be submitted to Devon Ryan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2009-048-114-EN. The comment period closes November 23, 2009. To view rules, please visit [http://www.tceq.state.tx.us/nav/rules/propose\\_adapt.html](http://www.tceq.state.tx.us/nav/rules/propose_adapt.html). For further information or questions concerning this proposal, please contact Steve Dayton, Air Quality Division, at (512) 239-6824.

TRD-200904574

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 9, 2009

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## Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapters 290 and 291

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 290, Public Drinking Water, and Chapter 291, Utility Regulations. These revisions are proposed under the requirements of Texas Health and Safety Code, Chapter 372, Texas Water Code, §13.506(b), and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill (HB) 2667, 81st Legislature, 2009, Regular Session, concerning plumbing fixtures. The proposed rulemaking clarifies and establishes the performance, testing, and labeling requirements of the American Society of Mechanical Engineers, the Canadian Standards Association, and the American National Standards Institute. HB 2667 establishes a phase-in of plumbing fixtures that meet the new performance requirements and are sold for use in the State of Texas. The phase-in will allow manufacturers time to change their production, while also allowing retailers the opportunity to turn over their inventory. HB 2667 creates an exemption for those manufacturers that have been certified by the United States Environmental Protection Agency's WaterSense Program. HB 2667 repeals the TCEQ's certification process for plumbing fixtures and the fees associated with the listing since the plumbing fixtures must meet national certification and testing procedures.

The commission will hold a public hearing on this proposal in Austin on November 17, 2009 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

Written comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-038-290-PR. The comment period closes November 23, 2009. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adapt.html](http://www.tceq.state.tx.us/nav/rules/propose_adapt.html). For further information, please contact Scott Swanson, Water Rights Section, (512) 239-0703.

TRD-200904551

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 9, 2009

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## Notice of Open Meeting Concerning Boat Sewage Disposal

Senate Bill (SB) 2445, 81st Legislature, 2009, requires the Texas Commission on Environmental Quality (TCEQ) to change rules contained in 30 Texas Administrative Code (TAC) Chapter 321 to address new definitions of "boat, boat pump-out station, shore side, mobile, or floating installation, and surface water in the state" and a change in the frequency of certifications for pump-out stations. TCEQ is proposing an open meeting to obtain input from the public on the changes required by SB 2445. TCEQ requests information on ways to implement the new rules. Staff is considering the repeal and proposal of a new 30 TAC Chapter 321, Control of Certain Activities by Rule, Subchapter A, Boat Sewage Disposal, by amending the fee structure. In addition, the rules would prohibit the discharge of treated water from marine sanitation devices into all enclosed freshwater lakes or bodies of water (including rivers that do not support interstate vessel traffic) in Texas,

in accordance with 40 Code of Federal Regulations Part 140, including expansion of the marine sanitation device certification requirement to certain boats when located on any of the inland waters.

The meeting will be held on Monday, November 16, 2009, at 1:00 p.m., at TCEQ's Offices at 12100 Park 35 Circle, Building A, Room 202, Austin, Texas.

If you are unable to attend the scheduled meeting, please submit your written comments no later than November 20, 2009, to Lynley Doyen, Texas Commission on Environmental Quality, P.O. Box 13087, MC 174, Austin, Texas 78711-3087, (512) 239-1364. Please note that this is an opportunity to provide informal comments to staff prior to the formal rulemaking process. A formal public hearing and comment period is planned for 2010.

TRD-200904604

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 13, 2009



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 23, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 23, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Brothers Paving, L.L.C.; DOCKET NUMBER: 2008-1838-WQ-E; TCEQ ID NUMBER: RN105537534; LOCATION: 15 acre tract of land located approximately 900 feet south of Soria Drive and 3,000 feet east of United States Highway 83, Laredo, Webb County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR15MB92 Part II Section E.3.d., by failing to post a construction site notice

containing all required information in a location where it is readily available for viewing; and 30 TAC §305.125(1) and TPDES General Permit Number TXR15MB92 Part II Section E.3.a. and Part III Sections C and F, by failing to develop a Storm Water Pollution Prevention Plan (SWP3) prior to obtaining coverage under the general permit and by failing to implement a SWP3 prior to commencing construction activities; PENALTY: \$3,150; STAFF ATTORNEY: Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: Chris James Becker; DOCKET NUMBER: 2009-0451-LII-E; TCEQ ID NUMBER: RN103229274; LOCATION: 5104 Jacobs Creek Court, Austin, Travis County; TYPE OF FACILITY: irrigation system; RULES VIOLATED: 30 TAC §344.24, by failing to comply with local requirements, ordinances and regulations designed to protect the public water supply; PENALTY: \$620; STAFF ATTORNEY: Sharesa Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: The City of Kenedy; DOCKET NUMBER: 2008-1104-SLG-E; TCEQ ID NUMBER: RN104967732; LOCATION: one-half mile east of the intersection of Highway 72 and Farm-to-Market Road 792, adjacent to the City's wastewater treatment plant, Karnes County; TYPE OF FACILITY: sludge land application site; RULES VIOLATED: 30 TAC §312.48 and Permit Number 04525, Section XI, Reporting Requirements, by failing to timely submit an annual sludge report by September 1, 2007; and 30 TAC §312.4(a) and TWC, §26.121(c), by failing to maintain authorization for the disposal of sewage sludge in a land application unit; PENALTY: \$4,100; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2008-0958-AIR-E; TCEQ ID NUMBER: RN100210319; LOCATION: 1515 Miller Cut-Off Road, La Porte, Harris County; TYPE OF FACILITY: polymer manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code (THSC), §382.085(b), and Air Permit Number 18978 Special Condition (SC) Number 1, by failing to prevent unauthorized emissions at the Olefins Unit; 30 TAC §116.115(c), THSC, §382.085(b), and Air Permit Number 4477 SC Number 1, by failing to prevent unauthorized emissions at the AB3 Unit on April 7, 2008; 30 TAC §116.115(c), THSC, §382.085(b), and Air Permit Number 4477 SC Number 1, by failing to prevent unauthorized emissions at the AB3 Unit on April 19, 2008; 30 TAC §116.115(c), THSC, §382.085(b), and Air Permit Number 18978 SC Number 1, by failing to prevent unauthorized emissions at the Olefins Unit on May 15, 2008; 30 TAC §101.201(f), by failing to provide additional information requested within the time frame established by the request; and 30 TAC §116.115(c), THSC, §382.085(b), and Air Permit Number 4477 SC Number 1, by failing to prevent unauthorized emissions at the AB3 Unit on April 22, 2008; PENALTY: \$51,857; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: General Dynamics Ordnance and Tactical; DOCKET NUMBER: 2008-1447-AIR-E; TCEQ ID NUMBER: RN102660909; LOCATION: 1200 North Glenbrook, Garland, Dallas County; TYPE OF FACILITY: ordnance casing manufacturing; RULES VIOLATED: 30 TAC §115.421(a)(9)(A)(iii) and §122.143(4), THSC, §382.085(b), and Federal Operating Permit Number O2594, General Terms and

Conditions, by failing to comply with the allowable volatile organic compounds limit of 3.5 pounds per gallon as an extreme performance coating; PENALTY: \$3,125; STAFF ATTORNEY: Laurencia Faso-yiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Inara Convenience, Inc. dba Rosedale Texaco and dba Flip In Market; DOCKET NUMBER: 2008-0094-PST-E; TCEQ ID NUMBER: RN101534790 and RN101539963; LOCATION: 6101 East Rosedale Street, Fort Worth, Tarrant County and 5860 South Dick Price Road, Kennedale, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(a) by failing to prevent an unauthorized discharge of gasoline fuel at the facility; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records on-site at the station during ordinarily manned business hours, and make them immediately available for review by agency personnel; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II vapor recovery system; 30 TAC §115.222(3) and THSC, §382.085(b), by failing to comply with emission control requirements by failing to keep the Stage I vapor recovery system vapor-tight; 30 TAC §334.49(a)(4), by failing to provide corrosion protection to all underground metal components of an underground storage tank system (UST) which was used to convey or contain regulated substances; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to ensure that all tanks at the station were monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.48(c), by failing to conduct inventory control each operating day for all USTs involved in the retail sale of petroleum substances used as a motor fuel; 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs were properly identified as listed on the station's UST registration and self-certification form by a legible tag, label or marking that was permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: \$23,450; STAFF ATTORNEY: Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Mary Rose Bowles, Independent Executrix of the Herminia G. Bowles Estate; DOCKET NUMBER: 2008-1032-MSW-E; TCEQ ID NUMBER: RN104515382; LOCATION: southwestern and western area of Bowles Ranch, Property IDs 3916 and 5100 on the Maverick County Appraisal District, located near 6226 El Indio Highway, approximately six miles on the west side, east of El Indio Highway, Eagle Pass, Maverick County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$1,100; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: Ray Carpenter dba Carpenter Dirt Work; DOCKET NUMBER: 2007-1807-MLM-E; TCEQ ID NUMBER: RN105114946; LOCATION: 3005 Central Texas Expressway, Lampasas, Lampasas County; TYPE OF FACILITY: composting facility; RULES VI-

OLATED: 30 TAC §328.5(d), by failing to establish and maintain financial assurance for the closure of a composting facility that stores combustible materials outdoors; and 30 TAC §328.5(h), by failing to have a fire prevention and suppression plan; PENALTY: \$4,257; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200904620

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 13, 2009



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 23, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 23, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Custom Water Company, L.L.C.; DOCKET NUMBER: 2009-0312-PWS-E; TCEQ ID NUMBER: RN101260115; LOCATION: 146 Alamo Road, Montague County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j), by failing to notify the Executive Director prior to making any significant changes or addition to the facility's production, treatment, storage, pressure maintenance or distribution facilities; 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per

minute per connection; 30 TAC §290.44(h)(4), by failing to annually test backflow prevention assemblies by a recognized backflow prevention assembly tester and certified to be operating within specifications; and 30 TAC §290.46(n)(2), by failing to provide an up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: \$1,590; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Jesus Garcia; DOCKET NUMBER: 2008-0646-MSW-E; TCEQ ID NUMBER: RN104688874; LOCATION: two miles north of Falfurrias on County Road 410, Jim Wells County; TYPE OF FACILITY: unauthorized municipal solid waste disposal operation; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ DO 2006-0078-MSW-E, Ordering Provision Numbers 2.a., b., and c., by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$4,050; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200904621

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 13, 2009



## Notice of Water Quality Applications

The following notices were issued on September 16, 2009 through October 9, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

### INFORMATION SECTION

XS RANCH FUND VI LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014946001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility will be located at 802 Sayers Road, approximately 2.3 miles northwest of the intersection of Phelan Road and Sayers Road in Bastrop County, Texas 78706.

CITY OF ANDREWS has applied for a renewal of TCEQ Permit No. WQ0010119001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day via irrigation on 120 acres of public access golf course and 320 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1.1 miles east-southeast of the intersection of U.S. Highway 385 and State Highway 115 (Broadway Avenue), 2000 feet south of the intersection of State Highway 115 and South East 1001. The evaporation/storage ponds are located to the south of the plant site. The 320 acres of agricultural irrigation land is located to the east of South East 1001 and the golf course is located in the northeast quadrant of the City of Andrews in Andrews County, Texas 79714.

CITY OF AUSTIN has applied for a renewal of TCEQ Permit No. WQ0012929001, which authorizes the disposal of treated domestic

wastewater at a daily average flow not to exceed 181,000 gallons per day via surface irrigation of 200 acres of golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1,500 feet west of the intersection of Plumewood Drive and Spicewood Club Drive in the Spicewood at Balcones Subdivision in Austin in Travis County, Texas 78750.

LOWER COLORADO RIVER AUTHORITY has applied for a renewal of TCEQ Permit No. WQ0013594001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 675,000 gallons per day at Outfall 001 and a daily average flow not to exceed 325,000 gallons per day at Outfall 002 via surface irrigation of 350 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 3100 Napa Drive, approximately 1,000 feet north of Farm-to-Market Road 2244 and approximately 3,000 feet northeast of the intersection of Farm-to-Market Road 2244 and State Highway 71 in Travis County, Texas 78738. The storage pond and irrigation site are located approximately 8,000 feet northwest of the intersection of Farm-to-Market Road 620 and State Highway 71 in Travis County, Texas 78738. An additional irrigation site will be located approximately 2,500 feet south of the intersection of Farm-to-Market Road 620 and State Highway 71 in Travis County, Texas 78738. An additional storage pond and a new treatment facility will be located approximately 3,000 feet northwest of the intersection of Farm-to-Market Road 2244 and State Highway 71 in Travis County, Texas 78738.

COMAL INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed TCEQ Permit No. WQ0013812004, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 130,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located at Smithson Valley Middle School, 6101 Farm-to-Market Road 311, north of the intersection of Farm-to-Market Road 3159 and Farm-to-Market Road 311, in Comal County, Texas.

LOWER COLORADO RIVER AUTHORITY has applied for a renewal of TCEQ Permit No. 14022-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day via subsurface low pressure dosing drain fields. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 1195 Ridge Harbor Drive, approximately 2.75 miles northeast of the intersection of State Highway 71 and State Highway 191 in Burnet County, Texas 78669.

CITY OF HOUSTON has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010495079, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,330,000 gallons per day. The facility is located at 9610 Kingspoint Road, southwest of the southern terminus of Grenadier Drive, approximately 2,640 feet south of Fuqua Road in South Houston in Harris County, Texas 77089.

GULF COPPER AND MANUFACTURING CORPORATION which operates the Gulf Copper & Dry Dock & Rig Repair, a general fabrication and repair facility for inland and offshore barges, supply vessels, oil rigs, and other similar vessels, has applied for a major amendment to TPDES Permit No. WQ0000779000 to authorize less stringent effluent limitations for total suspended solids at Outfalls 004 and 005; to remove Outfall 006; and to re-numbered Outfall 007 to Outfall 006. The current permit authorizes the discharge of treated domestic wastewater on a daily average flow not to exceed 16,000 gallons per day via



Outfall 001, process wastewater, ballast/void space water and exterior surface low pressure rinse water on an intermittent and flow variable basis via Outfall 004, process wastewater, ballast/void space water and exterior surface low pressure rinse water on an intermittent and flow variable basis via Outfalls 005 and 006, ballast/void space water and exterior surface low pressure rinse water on an intermittent and flow variable basis via Outfall 007. The facility is located on Pelican Island adjacent to Galveston Channel and approximately 1.5 miles east of the Pelican Island Bridge, Galveston County, Texas.

BROWNSVILLE PUBLIC UTILITIES BOARD which operates Silas Ray Power Plant, a steam electric and gas turbine power generating station, has applied for a major amendment to TPDES Permit No. WQ0003096000 to authorize an increase in the effluent discharge limitations for total dissolved solids; a modification to the monitoring frequency for all Outfall 001 limitations so that monitoring is only required when discharge occurs; and a renumbering of Outfall 102 to Outfall 101. The current permit authorizes the discharge of cooling tower blowdown at a daily average flow not to exceed 390,000 gallons per day via Outfall 001; and the discharge of storm water, low volume waste, and previously monitored effluents (low volume waste) on an intermittent and flow variable basis via Outfall 002. The facility is located at 94 West 13th Street, approximately 1500 feet west of the intersection of West Fronton and West 13th Streets, on the west side of the City of Brownsville, Cameron County, Texas 78523.

CALHOUN PORT AUTHORITY which operates the Port of Lavaca - Port Authority, a marine cargo transfer and storage station, has applied for a renewal of TPDES Permit No. WQ0003868000, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,500 gallons per day via Outfall 001 and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 2313 Farm-to-Market Road 1593 South, approximately 2.3 miles south of the intersection of State Highway 35 and Farm-to-Market Road 1593, at the Port of Port Lavaca - Point Comfort on the Point Comfort Turning Basin, near the City of Point Comfort in Calhoun County, Texas 77978.

MCCARTY ROAD LANDFILL TX LP which operates the McCarty Road Landfill, a municipal solid waste landfill, has applied for a renewal of TPDES Permit No. WQ0004134000, which authorizes a discharge of non-contaminated storm water, groundwater seepage, and remediated groundwater on an intermittent and flow variable basis via Outfall 001; and remediated groundwater at a daily average flow not to exceed 100,000 gallons per day via Outfall 002. The facility is located at 5757A Oates Road, adjacent to U.S. Highway 90, abutted by Ley Road to the north and Greens Bayou to the east, in the City of Houston, Harris County, Texas 77078.

PATTILLO BRANCH POWER COMPANY LLC which proposes to operate Pattillo Branch Power Plant, a natural-gas fired combined cycle electric generating station, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004886000, to authorize a discharge of cooling tower blowdown, low volume waste sources, and storm water at a daily average flow not to exceed 1,850,000 gallons per day via Outfall 001. The facility is located approximately 1 mile west of the intersection of Highway 82 and County Road 1752 on the south side of Highway 82, Fannin County, Texas 75479.

COLORADO COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 2 applied for a renewal of TPDES Permit No. WQ0010152001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located 25 feet east of the intersection of Mansfield and Wirtz Streets in the City of Garwood in Colorado County, Texas.

CITY OF LAREDO has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0010681003 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 7,500,000 gallons per day to an annual average flow not to exceed 12,000,000 gallons per day. The current permit authorizes the permittee to use 65 acres of monofill for the disposal of sludge adjacent to the treatment facility. The facility is located approximately 3,500 feet west of U.S. Highway 83 and 3.2 miles south of the intersection of U.S. Highway 83 and State Highway 20 in Webb County, Texas.

THE CITY OF BURNET has applied for a major amendment to TPDES Permit No. WQ0010793002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 726,000 gallons per day to an annual average flow not to exceed 1,700,000 gallons per day. The facility is located approximately 1400 feet southeast of Southern Pacific Railroad Bridge crossing Hamilton Creek in Burnet County, Texas.

WHARTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0010849001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 850 feet north of the intersection of Farm-to-Market Road 1160 and Loop 525, between Farm-to-Market Road 1160 and East Mustang Creek in Wharton County, Texas 77455.

CITY OF WHITNEY P.O. Box 2050, Whitney, Texas 76692 has applied for a major amendment to TPDES Permit No. WQ0011408002 to authorize less stringent effluent limitations. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 1 mile west of the intersection of Farm-to-Market Road 1244 and Farm-to-Market Road 933 in Hill County, Texas 76692.

LUTHERAN OUTDOORS MINISTRY OF TEXAS INC has applied for a renewal of TPDES Permit No. WQ0012168001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located approximately 1.8 miles northeast of the intersection of Farm-to-Market Road 155 and U.S. Highway 77 in Fayette County, Texas 78945.

CITY OF LA WARD has applied for a renewal of TPDES Permit No. WQ0013479001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day. The facility is located on the west side of Sam Houston Avenue, approximately 200 feet northeast of the intersection of Palacios Street and Rio Grande Street in the City of La Ward in Jackson County, Texas 77970.

CLEAR LAKE CITY WATER AUTHORITY has applied for a major amendment to TPDES Permit No. WQ0010539001 to authorize an increase in the total copper limits. The revised total copper limitation is based on a Water Effects Ratio (WER) study. From the study a site-specific WER of 2.71 for total copper was used. The current permit authorizes the discharge of treated domestic wastewater from an annual average flow not to exceed 10,000,000 gallons per day. The facility is located at 14210 Middlebrook Drive, approximately one mile northeast of the intersection of Bay Area Boulevard and Space Center Boulevard, southeast of Horsepen Bayou and adjacent to the northernmost part of the Lyndon B. Johnson Space Center in Harris County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.



THE CITY OF THORNTON has applied for a renewal of TPDES Permit No. WQ0010824001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 41,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of State Highway 14 and Farm-to-Market Road 1246, on the southwest side of the city limits of the City of Thornton in Limestone County, Texas 76687.

LAMAR CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014205001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 0.85 mile south-southeast of the intersection of Farm-to-Market Road 359 and Farm-to-Market Road 723 in Fort Bend County, Texas 77469.

SR SUPERIOR LLC has applied for a renewal of TPDES Permit No. WQ0014305001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The facility is located approximately 3.5 miles east-northeast of the intersection of Farm-to-Market Road 149 and Farm-to-Market Road 1488; approximately 4,200 feet west of the intersection of Stapleton Road and Superior Road; and, approximately 500 feet north of Stapleton Road in Montgomery County, Texas.

TEXAS RENAISSANCE FESTIVALS INC has applied for a new permit, Proposed TCEQ Permit No. WQ0014913001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day via surface irrigation of 6.5 acres of non-public access agricultural land. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 8,600 gallons per day via surface irrigation of 6.5 acres of non-public access agricultural land. The draft permit also authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day via evaporation for eight weekends in a year. The facility was previously permitted under Permit No. 12799-001, which expired March 1, 2008. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located adjacent to and west of Farm-to-Market Road 1774, approximately 4.2 miles northwest of the City of Magnolia in Grimes County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200904627

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 14, 2009



## Notice of Water Rights Application

Notices issued October 6, 2009.

APPLICATION NO. 5755A; River Place Property Owners Association, Inc., 7553 River Place Drive, College Station, Texas 77045, Applicant, has applied for an amendment to construct and maintain three smaller reservoirs on an unnamed tributary of the Brazos River, Brazos River Basin, pursuant to an Interruptible Water Availability Agreement and to use the bed and banks of reservoirs 2 and 3 on the unnamed tributary of the Brazos River to transport contract water for recreational purposes in Brazos County. More information on the application and

how to participate in the permitting process is given below. The application and fees were received on June 2, 2008. Additional information was received on August 7, 2008, October 9 and 14, 2008, May 26 and September 15, 2009. The application was accepted for filing and declared administratively complete on May 19, 2009. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Application No. 12452; Robert D. Rogers, Jr., 904 Columbia Drive, Southlake, Texas 76092, Applicant, has applied for a temporary permit to divert and use not to exceed 900 acre-feet of water within a period of three years from Cottonwood Creek, Trinity River Basin, for mining purposes in Ellis County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on April 20, 2009. Additional information and fees were received on June 15, 2009. The application was declared administratively complete and accepted for filing on July 7, 2009. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by October 28, 2009.

## INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200904628

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 14, 2009

## Texas Facilities Commission

### Request for Proposals #303-0-10520

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission and Department of Aging and Disability Services, announces the issuance of Request for Proposals (RFP) #303-0-10520. TFC seeks a ten (10) year lease of approximately 27,921 square feet of office space in Amarillo, Potter or Randall County, Texas.

The deadline for questions is October 30, 2009 and the deadline for proposals is November 13, 2009 at 3:00 p.m. The anticipated award date is December 16, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=85522](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=85522).

TRD-200904630

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 14, 2009

## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 17, 2009, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the 2009 Second and Third Quarter Healthcare Common Procedure Coding System (HCPCS) Updates. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for the 2009 Second and Third Quarter HCPCS Updates are proposed to be effective January 1, 2010.

**Methodology and Justification.** The proposed payment rates for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) were calculated in accordance with 1 TAC §355.8021(c), relating to the reimbursement methodology for DMEPOS as a home health service and 1 TAC §355.8441(3), relating to the reimbursement methodology for DMEPOS under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, known in Texas as Texas Health Steps (THSteps); and for physician-administered drugs and biologicals the proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physician and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after November 3, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax

at (512) 491-1983; or by e-mail at [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1983; or by e-mail to [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200904537

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 9, 2009

### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 17, 2009, at 1:30 p.m., to receive public comment on proposed Medicaid payment rates for stand-alone blood pressure monitoring devices associated with Ambulatory Blood Pressure Monitoring medical policy changes. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for these new Ambulatory Blood Pressure Monitoring benefits are proposed to be effective February 1, 2010.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8021(c), which addresses the reimbursement methodology for durable medical equipment (DME) as home health services, and 1 TAC §355.8441(3), relating to the reimbursement methodology for DME under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after November 3, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail

Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200904538

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 9, 2009



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 17, 2009, at 1:30 p.m., to receive public comment on proposed Medicaid payment rates for dynamic adjustable forearm, knee and shoulder devices associated with Orthoses medical policy changes. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) and (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for these new Orthoses benefits are proposed to be effective February 1, 2010.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §§355.8021(c), which addresses the reimbursement methodology for durable medical equipment (DME) as home health services, and 1 TAC §355.8441(3), relating to the reimbursement methodology for DME under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after November 3, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200904539

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 9, 2009



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 17, 2009, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Physician Evaluation and Management Services (Adult Annual Preventive/Wellness Exams). The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) and (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for Physician Evaluation and Management Services (Adult Annual Preventive/Wellness Exams) are proposed to be effective January 1, 2010.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after November 3, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200904540

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 9, 2009



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 17, 2009, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Quarterly Medicaid Fee Reviews. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located

at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) and (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for Quarterly Medicaid Fee Reviews are proposed to be effective January 1, 2010.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physician and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after November 3, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200904541

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 9, 2009



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 17, 2009, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Rabies Services. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for Rabies Services are proposed to be effective February 1, 2010.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physician and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after November 3, 2009. Interested

parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200904542

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 9, 2009



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 3, 2009, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Sleep Studies. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for Sleep Studies are proposed to be effective February 1, 2010.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after November 3, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200904543

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 9, 2009



#### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 17, 2009, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Transplant Non-Solid Organ Services. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for Transplant Non-Solid Organ Services are proposed to be effective February 1, 2010.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after November 3, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to [meisha.scott@hhsc.state.tx.us](mailto:meisha.scott@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200904544

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 9, 2009



#### Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 09-037, Amendment Number 883,

to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to provide assurance of the state's compliance with Section 6035 of the Deficit Reduction Act of 2005 (DRA), P.L. 109-171. Section 6035 requires states to have laws in effect mandating that legally responsible third party payors comply with the provisions of Section 1902(a)(25)(I) of the Social Security Act. The requested effective date for the proposed amendment is December 1, 2010.

The proposed amendment is estimated to have no impact on state or federal budgets.

To obtain copies of the proposed amendment, interested parties may contact Diane Broadhurst by mail at P.O. Box 85200, Mail Code 1354, Austin, Texas 78708-5200; by telephone at (512) 491-5638; by facsimile at (512) 833-6043; or by e-mail at [diane.broadhurst@hhsc.state.tx.us](mailto:diane.broadhurst@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200904622

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: October 13, 2009



### Houston-Galveston Area Council

#### Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits qualified individuals or firms to provide financial monitoring services for organizations contracted with H-GAC to provide social and health care services to aid recovery from Hurricane Ike using federal Social Services Block Grant funds. The successful bidder or bidders will be offered a contract beginning in December 2009.

Prospective bidders may obtain a copy of the Request for Proposals online at <http://www.h-gac.com> or by contacting Carol Kimmick at (713) 627-3200 or by sending email to [carol.kimmick@h-gac.com](mailto:carol.kimmick@h-gac.com). Responses are due at H-GAC offices by 12:00 noon Central Daylight time on Monday, November 2, 2009. H-GAC does not accept late proposals. We make no exceptions.

TRD-200904625

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: October 14, 2009



### Texas Department of Insurance

#### Company Licensing

Application for incorporation in the State of Texas by CAPSON PHYSICIANS INSURANCE COMPANY, a domestic life company. The home office is in Austin, Texas.

Application to change the name of DORAL DENTAL USA INSURANCE COMPANY, INC. to DENTAQUEST USA INSURANCE COMPANY, INC., a domestic life company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Regis-*

ter publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200904629

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: October 14, 2009



#### Notice of Premium Finance Assessment, Examination Fee/Assessment and Maintenance Tax Rate Determination

Rates of Assessment for Expenses of Examination of Foreign and Domestic Insurance Companies and Workers' Compensation Self-Insurance Groups, Costs of Examinations and Investigations and General Administrative Expenses for the Regulation of Insurance Premium Finance Companies, and the Assessment of Insurance Maintenance Taxes and Fees.

Sections 401.151 - 401.152, 401.155 - 401.156, and 651.006, Subtitles C and D of Title 3 of the Texas Insurance Code, and Chapters 403, 405, and 407A of the Labor Code require the Commissioner of Insurance to determine rates for the assessment for expenses of examination of foreign and domestic insurance companies and workers' compensation self-insurance groups; the assessment to cover the cost of examinations, investigations and general administrative expenses for the regulation of insurance premium finance companies; and the assessment of insurance maintenance taxes and fees. The Department is gathering information to be utilized in determining the rates of assessment of each tax and assessment.

#### NOTICE OF INFORMAL MEETING

An informal meeting to provide information, receive comments and information from all parties is scheduled for Monday, November 2, 2009, at 10:00 a.m. in Room 102, at the William P. Hobby, Jr., State Office Building, Tower III, 333 Guadalupe Street, Austin, Texas, to informally discuss the preliminary estimates of the projected rates of assessment, and to make available certain back-up documentation regarding the process and information related to determining the estimated projected rates of assessment and fees.

#### NOTICE OF PROJECTED RATES OF ASSESSMENT, FEES, AND PROCESS

Before the informal meeting, the Department will submit the projected rates of assessment and fees with the Chief Clerk and will post the projected rates of assessment and fees on the web at <http://www.tdi.state.tx.us/> on Tuesday, October 27, 2009. The projected rates of assessment and fees can be viewed at the site and persons may obtain copies of the projected rates of assessment by submitting a request to Mr. Joe Meyer, Deputy Chief Financial Officer, Texas Department of Insurance, Financial Services Division, MC108-3A, and P.O. Box 149104, Austin, TX 78714-9104.

Written comments on the projected rates of assessment and fees may be submitted to the Office of the Chief Clerk, Texas Department of Insurance, MC 113-2A, P.O. Box 149104, Austin, TX 78714-9104, on or before Friday, November 13, 2009, at 5:00 p.m. An additional copy of the comments must be simultaneously submitted to Joe Meyer, Deputy Chief Financial Officer, Texas Department of Insurance Financial Services Division, P.O. Box 149104, MC 108-3A, Austin, TX 78714-9104.

#### ASSESSMENT FEES AND DETERMINATION

Unless otherwise noticed, the Department will determine the rates of assessment and fees 25 days after the projected rates are filed in the

Chief Clerk's Office and posted on its web site. Any request for a hearing should be submitted separately and in writing no later than November 6, 2009. The written request should be submitted to the Office of the Chief Clerk, Texas Department of Insurance, MC 113-2A, P.O. Box 149104, Austin, TX 78714-9104.

If you have any questions, please contact the Chief Clerk's Office at (512) 305-7351.

TRD-200904529

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: October 8, 2009



#### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of COMMERCE GROUP BENEFITS AGENCY INC., a foreign third party administrator. The home office is AVON, OHIO.

Application of POMCO, INC., a foreign third party administrator. The home office is SYRACUSE, NEW YORK.

Application of BEN-E-LECT (using the assumed name of BEN-E-LECT INSURANCE ADMINISTRATORS, INC.) a foreign third party administrator. The home office is VISALIA, CALIFORNIA.

Application of F & N ENTERPRISES, LLC (using the assumed name of TEGRIC, LLC), a foreign third party administrator. The home office is CREVE COEUR, MISSOURI.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200904523

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: October 7, 2009



#### Legislative Budget Board

##### Request for Proposals

The Legislative Budget Board (LBB) announces the issuance of a Request for proposal (LBB 2009 TSPR RFP 1001) to solicit proposals from qualified, independent consultants to assist the LBB in conducting an evaluation of Early Childhood Readiness demonstration projects, also referred to as the Texas Early Education Model (TEEM).

Questions: concerning this RFP must be in writing and addressed to: Legislative Budget Board (512) 475-2902 (fax) or email: [contract.manager@lbb.state.tx.us](mailto:contract.manager@lbb.state.tx.us)

Closing Date: Proposals must be received in the issuing office at the address specified above no later than 2:00 p.m. (CST) on October 21, 2009. Proposals received after this time and date will not be considered.

Proposal Evaluation and Approval Process: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The LBB will make the final decision regarding all proposals. The LBB reserves the right to reject any or all submitted proposals.

The LBB is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of this RFP. The LBB shall not pay for any costs incurred by any respondent to this RFP.

The anticipated schedule of events:

October 7, 2009 - Issuance of RFP (after 10:00 a.m. CST)

October 21, 2009 - Deadline for Submission of Questions (2:00 p.m. CST)

October 22, 2009 - Release of Official Responses to Questions  
(or as soon thereafter as practical)

November 6, 2009 - Deadline for Submission of Proposals (2:00 p.m. CST)

(Late proposals will not be considered)

November 9 - 20, 2009 - Oral Presentations may occur

November 23, 2009 - Contract Execution (or as soon thereafter as practical)

November 24, 2009 - Commencement of Project Activities

TRD-200904525

Bill Parr

Assistant Director

Legislative Budget Board

Filed: October 7, 2009



## **Texas Lottery Commission**

Instant Game Number 1222 "Cash Extravaganza"

### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1222 is "CASH EXTRAVAGANZA". The play style is "key number match with multipliers".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1222 shall be \$5.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1222.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, DOLLAR BILL SYMBOL, 1X SYMBOL, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000, and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1222 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
DOLLAR BILL SYMBOL	WINALL
1X SYMBOL	WINX1
2X SYMBOL	WINX2
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$5.00	FIVE\$



<b>\$10.00</b>	<b>TEN\$</b>
<b>\$20.00</b>	<b>TWENTY</b>
<b>\$50.00</b>	<b>FIFTY</b>
<b>\$100</b>	<b>ONE HUND</b>
<b>\$500</b>	<b>FIV HUND</b>
<b>\$1,000</b>	<b>ONE THOU</b>
<b>\$50,000</b>	<b>50 THOU</b>

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200, or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1222), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1222-0000001-001.

K. Pack - A pack of "CASH EXTRAVAGANZA" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH EXTRAVAGANZA" Instant Game No. 1222 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH EXTRAVAGANZA" Instant Game is determined once the latex on the ticket is scratched off to expose 46 (forty-six) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "DOLLAR BILL" play symbol, the player wins ALL 20 PRIZES instantly. The player then scratches the BONUS BOX for a chance to win 2X, 5X or 10X the total PRIZE won on this ticket. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 46 (forty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 46 (forty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 46 (forty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than three (3) matching non-winning prize symbols will appear on a ticket.

C. The "2X" (win x 2), "5X" (win x 5) and "10X" (win x 10) BONUS BOX play symbols will appear on winning tickets only as dictated by the prize structure.

D. The "1X" (win x 1) BONUS BOX play symbol will always appear on winning tickets that do not utilize the "2X" (win x 2), "5X" (win x 5), "10X" (win x 10) BONUS BOX play symbols.

E. When the "DOLLAR BILL" (win all) play symbol appears, the BONUS BOX play symbol will always be the "1X" (win x 1) play symbol.

F. The "DOLLAR BILL" (win all) play symbol will only appear as dictated by the prize structure.

G. When the "DOLLAR BILL" (win all) play symbol appears, there will be no occurrence of any YOUR NUMBERS play symbols matching to any of the WINNING NUMBERS play symbols.

H. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

I. No duplicate WINNING NUMBERS play symbols on a ticket.

J. Non-winning prize symbols will never be the same as the winning prize symbol(s).

K. No prize amount in a non-winning spot will correspond with the play symbol (i.e., 20 and \$20).

L. The top prize symbol will appear on every ticket unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "CASH EXTRAVAGANZA" Instant Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00,

\$100, \$200, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH EXTRAVAGANZA" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH EXTRAVAGANZA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CASH EXTRAVAGANZA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "CASH EXTRAVAGANZA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

**Figure 2: GAME NO. 1222 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in**</b>
<b>\$5</b>	<b>566,400</b>	<b>12.50</b>
<b>\$10</b>	<b>708,000</b>	<b>10.00</b>
<b>\$20</b>	<b>330,400</b>	<b>21.43</b>
<b>\$50</b>	<b>67,850</b>	<b>104.35</b>
<b>\$100</b>	<b>14,160</b>	<b>500.00</b>
<b>\$200</b>	<b>3,009</b>	<b>2,352.94</b>
<b>\$500</b>	<b>2,714</b>	<b>2,608.70</b>
<b>\$1,000</b>	<b>354</b>	<b>20,000.00</b>
<b>\$5,000</b>	<b>16</b>	<b>442,500.00</b>
<b>\$50,000</b>	<b>7</b>	<b>1,011,428.57</b>

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.18. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1222 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1222, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1222. The approximate number and value of prizes in the game are as follows:

to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904632  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: October 14, 2009



Instant Game Number 1223 "Lucky Pair"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1223 is "LUCKY PAIR". The play style is "2 of a kind of 5 cards".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1223 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1223.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, J CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, 3 CARD SYMBOL, 2 CARD SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

**Figure 1: GAME NO. 1223 - 1.2D**

PLAY SYMBOL	CAPTION
A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
3 CARD SYMBOL	THR
2 CARD SYMBOL	TWO
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1223), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1223-0000001-001.

K. Pack - A pack of "LUCKY PAIR" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY PAIR" Instant Game No. 1223 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY PAIR" Instant Game is determined once the latex on the ticket is scratched off to expose 24 (twenty-four) Play symbols. If a player reveals 2 matching cards within a HAND, the player wins the PRIZE shown for that HAND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 24 (twenty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 24 (twenty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 24 (twenty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 24 (twenty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No matching non-winning prize symbols on a ticket.

C. No matching non-winning hands on a ticket (in any order).

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No 3 or more matching play symbols within a HAND.

F. No HAND will contain 5 play symbols of sequential rank in any order. For example, 3, 4, 7, 5, 6.

G. No HAND will contain more than one pair of matching play symbols.

H. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY PAIR" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY PAIR" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY PAIR" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "LUCKY PAIR" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "LUCKY PAIR" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 tickets in the Instant Game No. 1223. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1223 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	729,600	12.50
\$2	912,000	10.00
\$4	228,000	40.00
\$5	60,800	150.00
\$10	60,800	150.00
\$20	22,800	400.00
\$40	12,350	738.46
\$100	760	12,000.00
\$1,000	76	120,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.50. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1223 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1223, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904633  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: October 14, 2009



Instant Game Number 1228 "\$50,000 Joker's Wild"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1228 is "\$50,000 JOKER'S WILD". The play style for this game is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1228 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1228.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A CARD SYMBOL, K CARD SYMBOL, Q CARD SYMBOL, J CARD SYMBOL, 10 CARD SYMBOL, 9 CARD SYMBOL, 8 CARD SYMBOL, 7 CARD SYMBOL, 6 CARD SYMBOL, 5 CARD SYMBOL, 4 CARD SYMBOL, 3 CARD SYMBOL, 2 CARD SYMBOL, JOKER CARD SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1228 - 1.2D

PLAY SYMBOL	CAPTION
A CARD SYMBOL	ACE
K CARD SYMBOL	KNG
Q CARD SYMBOL	QUN
J CARD SYMBOL	JCK
10 CARD SYMBOL	TEN
9 CARD SYMBOL	NIN
8 CARD SYMBOL	EGT
7 CARD SYMBOL	SVN
6 CARD SYMBOL	SIX
5 CARD SYMBOL	FIV
4 CARD SYMBOL	FOR
3 CARD SYMBOL	THR
2 CARD SYMBOL	TWO
JOKER CARD SYMBOL	JKR
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1228), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1228-0000001-001.

K. Pack - A pack of "\$50,000 JOKER'S WILD" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$50,000 JOKER'S WILD" Instant Game No. 1228 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$50,000 JOKER'S WILD" Instant Game is determined once the latex on the ticket is scratched off to expose 56 (fifty-six) Play Symbols. In Game 1, if a player reveals 2 matching cards within a HAND, the player wins the PRIZE shown for that HAND. If a player reveals a "joker" play symbol, in any HAND within this game, the player wins the PRIZE shown for that symbol instantly. In Game 2, if a player matches any of YOUR CARDS play symbols to the WINNING CARD play symbol, the player wins the PRIZE shown for that card. If a player reveals a "joker" play symbol within this game, the player wins DOUBLE the PRIZE shown for that symbol. In Game 3, if any of YOUR CARDS play symbols beats the DEALER'S CARD play symbol, the player wins the PRIZE shown for that CARD. If a player reveals a "joker" play symbol within this game, the player WINS ALL SIX PRIZES shown. No portion of the display printing nor any



extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 56 (fifty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 56 (fifty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 56 (fifty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 56 (fifty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The top prize symbol will appear on every ticket unless otherwise restricted.

C. No more than five (5) matching non-winning prize symbols will appear on a ticket.

D. GAME 1: No duplicate non-winning HANDS.

E. GAME 1: No duplicate non-winning prize symbols within this game.

F. GAME 1: There will be no more than four (4) duplicate non-winning play symbols in this game.

G. GAME 1: Non-winning prize symbols will never be the same as the winning prize symbol(s) within this GAME.

H. GAME 1: The "JOKER" (auto win) play symbol will only appear once within the GAME.

I. GAME 2: No more than 3 matching non-winning prize symbols in this game.

J. GAME 2: The "JOKER" (doubler) play symbol will only appear on intended winning tickets as dictated by the prize structure.

K. GAME 2: Non-winning prize symbols will never match a winning prize symbol within this GAME.

L. GAME 2: No more than 2 duplicate non-winning play symbols within this GAME.

M. GAME 3: There will be no matching non-winning prize symbols in this game.

N. GAME 3: There will never be a tie between the DEALER'S CARD and any of the YOUR CARDS in this GAME.

O. GAME 3: No duplicate non-winning YOUR CARDS play symbols in this game.

P. GAME 3: The "JOKER" (win all) play symbol will only appear on intended winning tickets as dictated by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$50,000 JOKER'S WILD" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500

ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$50,000 JOKER'S WILD" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$50,000 JOKER'S WILD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$50,000 JOKER'S WILD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$50,000 JOKER'S WILD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1228. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1228 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	613,600	11.54
\$10	660,800	10.71
\$15	236,000	30.00
\$20	141,600	50.00
\$50	94,400	75.00
\$100	18,998	372.67
\$500	1,416	5,000.00
\$1,000	236	30,000.00
\$5,000	21	337,142.86
\$50,000	7	1,011,428.57

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.01. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1228 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1228, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200904634  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: October 14, 2009

#### Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed amendments to 16 TAC §402.405 relating to Temporary Authorization, proposed repeal of 16 TAC §402.702 relating to Location Verification Inspection, proposed amendments to 16 TAC §402.422 relating to Amendment to a Regular License to Conduct Charitable Bingo,

proposed amendments to 16 TAC §402.409 relating to Amendment for Change of Premises or Occasions Due to Lease Termination or Abandonment, proposed amendments to 16 TAC §402.101 relating to Advisory Opinions, proposed amendments to 16 TAC §402.102 relating to Bingo Advisory Committee, proposed amendment to 16 TAC §402.103 relating to Training Program, and proposed new 16 TAC §402.411 relating to Late License Renewal will be held on Tuesday, November 3, 2009, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, and Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200904510  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: October 7, 2009

#### Office of the Controller, Lotto Texas® Jackpot Estimation

The Texas Lottery Commission has determined that information that is confidential by law, because it goes to the security of the lottery, is contained within the procedure referenced below. The confidential information has been redacted within this procedure.



# TEXAS LOTTERY COMMISSION

## OFFICE OF THE CONTROLLER

### PROCEDURE

<b>Number:</b> OC-JE-002	<b>Title:</b> <i>Lotto Texas</i> ® Jackpot Estimation	<b>Approval:</b> Texas Lottery Commission
<b>Page:</b> 1 of 8		
<b>Effective Date:</b> October 2, 2009	<b>Approval Date:</b> October 2, 2009	<b>Review Date:</b>

#### PROCEDURE NUMBER

OC-JE-002 [Supersedes OC-JE-002 effective October 29, 2008]

#### PURPOSE

To provide standard guidelines for projecting and estimating sales for future *Lotto Texas* estimated annuitized jackpot prize amounts that will be advertised.

#### SCOPE

This procedure applies to the Office of the Controller, the Lottery Operations Division, and the Executive Division.

#### RESPONSIBILITY

This procedure is primarily the responsibility of the Controller, Financial Operations Manager, Lottery Operations Director, Lottery Products Manager, the Deputy Executive Director, the Executive Director, and designated jackpot team personnel (jackpot team) in the Office of the Controller and the Lottery Products Department. The final approval for the estimated annuitized jackpot to advertise will be provided by the Executive Director.

#### GENERAL

The Texas Lottery Commission (TLC) jackpot team ensures that *Lotto Texas* sales and other information necessary to estimate the jackpot amount to be advertised is gathered so the Controller, the Lottery Products Manager and the Lottery Operations Director, or their designee(s) may review and recommend estimates and projections that will be presented to the Deputy Executive Director and the Executive Director, or their designee(s). The Executive Director, or their designee, has the sole authority to approve the final projected estimated annuitized jackpot to advertise for *Lotto Texas* Drawings.

<b>Number:</b> OC-JE-002	<b>Title:</b> <i>Lotto Texas</i> ® Jackpot Estimation	<b>Approval:</b> Texas Lottery Commission
<b>Page:</b> 2 of 8		
<b>Effective Date:</b> October 2, 2009	<b>Approval Date:</b> October 2, 2009	<b>Review Date:</b>

The "Lotto Texas" On-Line Game rule is found in the Texas Administrative Code, Title 16, Part 9, Chapter 401, Subchapter D, Rule 401.305. The Lotto Texas Game rule states, "The jackpot prize for a drawing is the greater of 40.47 percent of the proceeds from Lotto Texas ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the sales proceeds, paid in 25 annual installments; or the amount advertised in accordance with subsection (e) of the Lotto Texas On-Line Game Rule as the estimated jackpot for the drawing, paid in 25 annual installments."

A roll cycle is a series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

The advertised amount shall be an amount payable in 25 annual installments. To the extent that the advertised amount is based on projected sales, the projections shall be fair and reasonable. The Executive Director, or designee, may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections. The Lottery Products Department will be responsible for notifying all necessary personnel and/or vendors.

## REFERENCE

OC-JE-005, *Lotto Texas* Jackpot Payment and Investment

## PROCEDURE

### I. Timeline

1. The completed Lotto Texas Jackpot Estimation Worksheet shall be presented to the Executive Director no later than 4:00 p.m. on Wednesdays and Fridays.
2. In the event there is a delay in presenting the worksheet to the Executive Director, the jackpot team shall immediately determine the cause for the delay and inform each member of the jackpot estimation team of the cause for the delay.
3. Distribution of estimated jackpot information as outlined in Section VI shall be completed by close of business, or 5:00 p.m. on Wednesdays and Fridays.
4. The advertised jackpot for the current draw may be increased based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot. The Executive Director, or their designee, will be consulted regarding the time frame for increasing the advertised jackpot amount.
5. In the event Wednesday or Friday falls on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved, or if, due to a large jackpot level, a Friday estimation is delayed until Saturday, the above deadlines may be revised as needed.

### II. Compile Estimate Information:

1. Determine the Interest Factor: Investment cost information is obtained from the Texas Treasury Safekeeping Trust Company by designated Controller staff and approved by Financial Operations Manager prior to each estimation. Controller staff requests the estimated cost of 25 annual payments to yield the advertised jackpot. The interest

<b>Number:</b> OC-JE-002	<b>Title:</b> <i>Lotto Texas</i> ® Jackpot Estimation	<b>Approval:</b> Texas Lottery Commission
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factor is calculated by dividing the advertised jackpot by the estimated cost, including the initial payment required, to fund an investment stream that would yield the total advertised jackpot over a 25-year period. Note that the investment information may not be obtainable if the appropriate financial institutions and/or brokers are not open for business such as on business holidays. In those instances either a request for the information is made the day before or the prior estimation interest factor is used.

Compile actual draw sales for the current drawing: Draw sales for each *Lotto Texas* drawing are recorded both on the [REDACTED] screens in the Lottery Operator's gaming system ([REDACTED]) and on [REDACTED] reports. [REDACTED] draw sales are included on the [REDACTED] screen, the [REDACTED] screen, and the [REDACTED] screen.

### III. Estimate the Sales and Jackpot Support for the Current and Future Draws:

The Office of the Controller and the Lottery Products Department will independently estimate draw sales and jackpot support for the current *Lotto Texas* drawing and project the jackpot to be advertised for the next drawing in the event of a roll. Estimations may be made on a day prior to Wednesday or Friday if Wednesday or Friday fall on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved. If the estimation is completed prior to the holiday, at least one member of the estimation team will review sales prior to the drawing for changes in *Lotto Texas* sales or other factors that may impact jackpot prize support. If a revision to the advertised jackpot on the day of estimation or the day of the drawing is necessary, management or their designee(s) will be contacted.

1. Project the *Lotto Texas* draw sales for the current drawing: Estimations are made each Wednesday and Friday. If the draw day is on a Wednesday, estimate sales for that Wednesday. If the draw day is on a Saturday, estimate sales for Friday and Saturday. However, jackpot estimations may be updated at any time if either of the Lottery Products or Controller staff believe that changes in *Lotto Texas* sales or other factors may impact jackpot prize support. Estimate draw sales by using historical sales data and other relevant factors that may impact sales. Combine the actual draw sales to date with the projected draw sales for the remainder of the draw period to calculate the total projected draw sales.
  - a) Evaluate historical sales data: Project the current draw day sales by estimating the expected increase/decrease in sales using the hourly sales trend and/or growth pattern for previous like-day drawings. Hourly sales information for Wednesday and Friday are available from [REDACTED].
  - b) Other factors to consider in estimating draw sales, along with evaluating historical sales data, include but are not limited to:
    - Wednesday draw sales are generally lower than Saturday draw sales.
    - length of time since a large jackpot was advertised

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- effect of holidays (Holidays generally cause sales to peak early and then fall below average on the holiday.)
- weather throughout the state, especially in key markets
- sales trends for like jackpots and/or most recent roll cycles
- current advertising/promotions schedule
- relevant media issues
- on-line terminal connection problems
- jackpots advertised in neighboring states and similar games such as Mega Millions
- new on-line game launches or other game enhancements
- overall trends in sales over similar time periods
- other - IRS deadlines, spring break, strength of the economy, etc.

It is not necessary to evaluate all these factor for every estimate. Sound judgment should be used in determining which factors to consider.

2. Evaluate Sales Support for the Current Advertised Jackpot: Determine the projected *Lotto Texas* jackpot sales support given the current advertised jackpot.
  - a) If sales proceeds and the Lotto Texas prize reserve fund, if applicable, are not sufficient to pay a jackpot prize, the TLC shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, Section 466.355.
  - b) The advertised jackpot for the current draw may be increased prior to the draw based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot.
3. Estimate sales for the next draw in the event of a rollover: To estimate sales for the next draw, use historical sales data and any other relevant information as described in 1.a) and 1.b) above.
4. Project a range of prospective estimated annuitized jackpot prize amounts that may be advertised in the event of a rollover: Use estimated draw sales for the current draw, estimated draw sales for the next draw, and the estimated interest factor to identify a range of prospective estimated annuitized jackpot prize amounts.
  - a) The estimated annuitized jackpot prize amount will automatically be set to four million dollars for the first draw following a draw in which at least one jackpot prize ticket is identified.
  - b) The range of projected estimated annuitized jackpot amounts to advertise in the event of a rollover should reflect at least one million dollars greater than the current advertised jackpot.

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- c) Controller staff will complete a checklist to verify that all prior information is correct and that all of the required steps have been completed.

#### **IV. Approval of Estimated Annuitized Jackpot Amount to Advertise:**

1. Office of the Controller and Lottery Products Department personnel should consult with each other regarding the most fair and reasonable sales projections and other factors which may impact jackpot prize support for the estimated annuitized jackpot amount to advertise. Office of the Controller and Lottery Products Department staff will agree on a negotiated sales projection and this information will be presented to the Controller, the Products Manager and Lottery Operations Director or their designee(s), for their independent recommendations to the Deputy Executive Director and the Executive Director. In the event that any member of the above authorized staff is unavailable to sign the jackpot estimation worksheet in person, then approval of the projected estimated annuitized jackpot amount to advertise in the event of a rollover can be authorized and documented by email, pager or phone. Temporary signature authority may be designated to appropriate personnel that will be accountable for jackpot estimation approval. Additionally, this temporary signature authority designation may be granted to an individual on this list of authorized signatures reflected above. For example, the Lottery Operations Director may grant temporary signature authority to the Products Manager thus resulting in two signatures from the Products Manager. Temporary signature authorization is to be in writing, by email or pager, and should specify the effective length of time. Documentation of such approval or delegation shall be kept with the estimation file maintained by Lottery Products Department and a copy of the documentation should be provided to each member of the jackpot estimation team.
  - a) The recommendation of the jackpot amount to advertise in the event of a rollover should typically be based on the "low end" sales support shown at the time of estimation, however, for marketing related purposes there may be instances when the recommended jackpot could be based on an amount exceeding the "high end" sales support.
  - b) The range of potential jackpots to advertise in the event of a rollover should be used by management as a tool to understand the amount of additional funds that may be required to fund the jackpot prize. In the event that "low end" sales do not support a roll from the currently advertised jackpot, the TLC will roll the jackpot in \$1 million increments.
2. In the event one of the authorized staff (Controller, Products Manager or Lottery Operations Director) identified in Section IV.1. is unavailable for signature authority and temporary signature authority cannot be obtained by 4:00 p.m., the matter shall be brought to the attention of the Deputy Executive Director, Executive Director, or person in charge of the agency by Executive Order (in that order), who shall appoint one of the authorized staff identified in Section IV.1. to act instead of the unavailable signatory. The temporary signature authority should be designated to appropriate personnel that will be accountable for jackpot estimation approval.



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3. The recommended jackpot amount to advertise is then presented to the Deputy Executive Director for review and concurrence or disagreement, and ultimately to the Executive Director for final approval of the subsequent (annuitized) jackpot prize amount that will be advertised in the event of a *Lotto Texas* jackpot rollover. The *Lotto Texas Jackpot Estimation Worksheet* presented will state the projected current (annuitized) jackpot prize amount for the current draw. In the event that any member of the above authorized staff is unavailable to sign the worksheet in person, then approval can be authorized and documented by email, pager or phone. Temporary signature authority for the Deputy Executive Director and the Executive Director may be designated to appropriate personnel other than those individuals listed above in Section IV.1 that will be accountable for jackpot estimation approval. Temporary signature authorization is to be in writing, by email or pager, and should specify the effective length of time. Documentation of such approval or delegation shall be kept with the estimation file maintained by Lottery Products Department and a copy of the documentation should be provided to each member of the jackpot estimation team.
4. In the event the Deputy Executive Director or the Executive Director is not available, the matter shall be brought to the attention of the Executive Director or Deputy Executive Director or their designee(s). The Deputy Executive Director or Executive Director shall appoint an authorized person other than those individuals identified in Section IV.1. to act instead of the unavailable signatory. In the event neither the Executive Director or their designee nor the Deputy Executive Director or their designee are available, the matter shall be brought to the attention of the person in charge of the agency by Executive Order who shall designate a substitute signature authority for the absent signatory authority that will be accountable for jackpot estimation approval. This will ensure the reliability and business continuity required for the advertisement of future prospective *Lotto Texas* estimated annuitized jackpot prize amount. Should this occur, the substitute signature authority event shall be documented and kept in the estimation file maintained by the Lottery Products Department and a copy of the documentation shall be provided to each member of the jackpot estimation team. The Internal Auditor, Chairman of the Commission, and each Commissioner should also be provided notification of the substitute signature authority event. Following this notification, documentation should also be placed in the estimation file maintained by the Lottery Products Department.

**V. Distribution of Estimated Jackpot Information on the Agency Website:**

1. The Office of Controller staff will perform the following:
  - a) After the Executive Director has approved an advertised estimated jackpot under subsection (e) of the *Lotto Texas On-Line Game Rule*, a member of the jackpot team will post the amount of ticket sales, if any, for previous drawings in the roll cycle, the amount of projected ticket sales for the upcoming drawing, investment information used to determine the advertised estimated jackpot, and other information used to determine the advertised estimated jackpot. This may be achieved by uploading a scan of the signed *Lotto Texas Jackpot Estimation Worksheet*.

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b) The interest factor calculated by the agency based on investment information obtained from the Texas Treasury Safekeeping Trust Company and used by the TLC to determine the advertised jackpot will be entered on the [REDACTED] screens for posting to the agency website.

c) The approved estimated jackpot for the next draw in the roll cycle and the approximate cash value of the estimated jackpot will be entered on the [REDACTED] screens for posting to the agency website and will be published after the draw if no jackpot tickets were sold.

d) In addition, the approximate cash value of the jackpot prize amount for four million dollars is entered on the advertised jackpot screens for posting to the agency website and publishing after the draw if a jackpot prize ticket is sold for a drawing.

#### **VI. Distribution of Estimated Jackpot Information:**

1. The On-Line Product Specialist or designee:
  - a) Fills in the approved estimated annuitized jackpot prize amount and the associated approximate cash value amount for the next drawing on the [REDACTED]. In addition, the approximate cash value for the annuitized four million dollar starting jackpot amount is also filled in. This form is used to notify the Lottery Operator of the estimated annuitized jackpot prize amount and the associated approximate cash value for the next drawing.
  - b) Faxes a copy of the [REDACTED] to the Lottery Operator for processing.
  - c) Enters the estimated annuitized jackpot prize amount to be advertised in the event of a rollover, the associated approximate cash value for the annuitized amount and the current interest factor, in the [REDACTED] screens. The application is used to disseminate estimated annuitized jackpot information and the associated approximate cash value amount to the agency website as well as to pertinent TLC staff.
  - d) If the application is not functioning and the dissemination of the roll amount cannot be automatically sent, the [REDACTED] form must be physically delivered to the Texas Lottery Computer Room so the agency website can be updated by Information Resources after the drawing results are finalized. Before 5:00 p.m., an e-mail message must be sent to pertinent TLC and vendor staff to notify them of the jackpot prize amount that will be advertised in the event of a rollover.
  - e) Calls the Lottery Operator's control room to verify receipt of the fax and to confirm that the *Lotto Texas* estimated annuitized jackpot prize amount and the approximate cash value is legible. The name of the Lottery Operator staff member and time and date the verification took place shall be kept in the estimation file maintained by the Lottery Products Department.

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- f) Sends a voicemail broadcast message to pertinent TLC and vendor staff, notifying them of the estimated annuitized jackpot prize amount that will be advertised in the event of a rollover.
2. The Office of Controller staff will email the final and approved jackpot estimation worksheet to the Internal Audit Department, the Legislative Budget Board and the Governor's Office.
    - a) Internal Audit Department Contacts:  
Assigned Internal Audit Contact – (contact name)@lottery.state.tx.us
    - b) Legislative Budget Board Contacts:  
Assigned Budget Analyst - (analyst name)@lbb.state.tx.us  
Assigned Revenue Analyst – (analyst name)@lbb.state.tx.us.
    - c) Governor's Office Contact:  
Assigned Analyst, Governor's Advisor Budget Planning and Policy, (analyst name)@governor.state.tx.us

**VII. Distribution of information when the current advertised jackpot prize amount is changed:**

If the estimated annuitized jackpot prize amount that is currently advertised is changed prior to the drawing, Lottery Products Department personnel will update the outdoor billboards with the new *Lotto Texas* estimated annuitized jackpot prize amount to advertise and will also contact the advertising agency(s) and the Lottery Operator control room. Media Relations will notify the media that there is a new estimated annuitized jackpot prize amount being advertised.

TRD-200904534  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: October 8, 2009

The Texas Lottery Commission has determined that information that is confidential by law, because it goes to the security of the lottery, is contained within the procedure referenced below. The confidential information has been redacted within this procedure.

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Office of the Controller, Lotto Texas® Jackpot Payment and Investment



## TEXAS LOTTERY COMMISSION

### OFFICE OF THE CONTROLLER

#### PROCEDURE

<b>Number:</b> OC-JE-005	<b>Title:</b> <i>Lotto Texas</i> <sup>TM</sup> Jackpot Payment and Investment	<b>Approval:</b> Texas Lottery Commission
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#### PROCEDURE NUMBER

OC-JE-005 [Supersedes OC-WP-003 effective April 27, 2006]

#### PURPOSE:

This procedure outlines steps to be taken after a *Lotto Texas*<sup>TM</sup> drawing in which a *Lotto Texas*<sup>TM</sup> jackpot (first prize) ticket is sold.

#### SCOPE:

This procedure applies to Office of the Controller personnel and the Comptroller of Public Accounts through the Texas Treasury Safekeeping Trust Company (TTSTC)<sup>1</sup>.

#### RESPONSIBILITY:

Office of the Controller personnel, including authorized signatories designated by the Controller, are responsible for administering this procedure.

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<sup>1</sup> TTSTC exists and functions by virtue of Subchapter G, Chapter 404, Texas Government Code, and is empowered to manage, disburse, transfer, safekeep, and invest funds and securities as provided by statute or belonging to the State, agencies and local political subdivisions of the State. TTSTC is responsible for submitting requests for trade inquiries, and investment purchases from investment firms that have been approved by TTSTC and/or the Comptroller of Public Accounts. Reference: Texas Government Code §466.403 Payment of Prizes in Installments.

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#### GENERAL:

Under the "Lotto Texas" On-Line Game Rule, a person may, at the time of making a play, select the option for payment of the cash value of a share of the jackpot if the play is a winning play. Except as provided below, a person who is entitled to a share of a jackpot prize and who did not opt to receive the cash value of the jackpot prize shall receive payment in 25 annual installments. If a person would otherwise receive total installment payments of \$2 million or less, the Texas Lottery Commission (TLC) shall pay the person, upon completion of all validation procedures, a single payment in the amount of the cash value of those total installment payments. The cash value is the cost on the first business day after the applicable drawing of funding those installment payments. Upon Lotto Texas jackpot results reporting one or more tickets sold with a matching combination of numbers, and when indicated, Controller personnel will contact the Comptroller of Public Accounts acting by and through TTSTC, on the following working day (trade date).

The roll cycle is a series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

The first business day after the Lotto Texas drawing, the [REDACTED] will be provided by Information Technology. The [REDACTED] will identify the payment option(s) chosen at the time of purchase. The Pool Snapshot from the [REDACTED] will identify the percentage of sales applicable to the jackpot prize. The [REDACTED] will be emailed by the lottery operator to the TLC as secondary reports to reflect the information from the prize ticket(s).

Ref: 16 Texas Administrative Code §401.305 "Lotto Texas" On-Line Game Rule.

#### PROCEDURE:

The jackpot prize for a drawing is the greater of 40.47 percent of the proceeds from Lotto Texas ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the proceeds from ticket sales, paid in 25 annual installments; or the amount advertised in accordance with subsection (e) of the Lotto Texas On-Line Game Rule as the estimated jackpot for the drawing, paid in 25 annual installments.

If sales proceeds and the Lotto Texas prize reserve fund are not sufficient to pay a jackpot prize, the TLC shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, Section 466.355.

TTSTC will provide upon request either a "Lottery Prize Schedule" or a "Lottery Financing Calculator." Either report supplies the necessary information to calculate the cost of investment or the cash value. The Lottery Prize Schedule may be provided to reflect the purchase of a stream of investments.

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Description	Lottery Prize Schedule	Lottery Financing Calculator
Amount to be invested for 24 years.	Payment (column total)	Cost of Zeros
Initial Installment	Initial Payment	Cash Payment
Additional sales contribution available. (To be added to the initial installment.)	Difference between the sum of the invested amount over 24 years plus the initial payment compared to the total sales contribution for the jackpot prize.	Difference between the sum of the invested amount over 24 years plus the cash payment compared to the total sales contribution for the jackpot prize.

Review of the annuity & cash value estimate and use of the information to complete the Lotto Texas Drawing Results & Reserve Entry Form: The available sales contribution for the jackpot prize is found on the [REDACTED] screen for Lotto Texas. If the "Total Cost of 25 Payments" is less than the "Amount Available," the difference "Additional Sales Contribution," is added to the jackpot prize amount. If the "Total Cost of 25 Payments" is more than the "Amount Available," the difference is paid from the reserve or from other authorized sources, including the State Lottery Account as identified in Government Code, Section 466.355.

**1. The annual payments option paid in one payment:**

- 1.1. If it appears that the funds may not be sufficient to pay each share of the jackpot prize in an amount greater than \$2 million, the designated employee will request an annuity & cash value estimate to yield the advertised jackpot from TTSTC on the first working day following the Lotto Texas drawing. If it is determined that the cash value of each share is less than the amount required to pay a prize over 25 years *equal to or less than \$2 million*, the prize will be paid, upon completion of all validation procedures, in a single payment in the amount of the cash value of those total installment payments. The cash value is the cost on the first business day after the applicable drawing of funding those installment payments. Because the prize will be paid in a single payment, do not return a signed annuity & cash value estimate to TTSTC.
- 1.2. The designated employee will review the annuity & cash value estimate and use the information to complete the Lotto Texas Drawing Results & Reserve Entry Form. The sales contribution for the jackpot prize is found on the [REDACTED] screen for Lotto Texas. If the "Total Cost of 25 Payments" is less than the "Amount Available," the difference "Additional Sales Contribution," is added to the jackpot prize amount. If the "Total Cost of Prizes" is more than the "Amount Available," the difference is paid from the reserve or from other authorized sources, including the State Lottery Account as identified in Government Code, Section 466.355.
- 1.3. The designated employee will provide the annuity & cash value estimate, the [REDACTED], and the signed Lotto Texas Drawing Results &

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Reserve Entry Form to the Controller or other authorized signatory. The Controller or other authorized signatory will review the information for completeness and accuracy and will sign the form.

1.4. Until such time as the Lotto Texas prize reserve fund is depleted, the designated employee will update the Lotto Texas Prize Reserve spreadsheet using the information on the [REDACTED] Report and the information on the Lotto Texas Drawing Results & Reserve Entry Form. This step must be completed for all Lotto Texas drawings. See addendum for information acquired from the [REDACTED] Report. The Lotto Texas Drawing Results & Reserve Entry Form provides the amount of funds taken from the prize reserve or from other authorized sources including the State Lottery Account to fund the jackpot prize.

**2. The annual payments option paid in 25 installments:**

2.1. If it is determined that each share of the annuitized jackpot prize may provide a total payment stream for 25 installments greater than \$2 million, including any additional sales contribution, the designated employee will request an annuity purchase from TTSTC on the first working day following the Lotto Texas drawing. TTSTC shall be instructed to purchase an investment stream that will provide an initial payment plus 24 subsequent annual payments that will yield a total prize that is equal to the advertised jackpot. In the event that funds are sufficient to pay a jackpot prize that is greater than the advertised amount, additional sales may be added to the initial payment.

2.2. If more than one jackpot prize ticket is sold and the prize per share does not divide equally by the number of shares, it is preferable, to purchase separate investments for each jackpot prize ticket sold. Due to 16 Texas Administrative Code Game Rule §401.310 Payment of Prize Payments upon Death of Prize Winner a sale of an annuity may be approved by the Commission. Therefore, the annuity will need to be divided equally among all shares in the event the Commission needs to sell a separate share.

2.3. TTSTC will provide, by facsimile or other acceptable method, the Lottery Prize Schedule to the designated employee. The schedule should reflect the par value over 24 years, the first maturity year following the date of the draw, and the cost of each investment. The designated employee and an authorized signatory will review the schedule for completeness. To complete the purchase, the document must be signed by an authorized signatory and returned to TTSTC promptly.

2.4. The designated employee will complete the Lotto Texas Drawing Results & Reserve Entry Form. Once completed, the designated employee will provide the Lottery Prize Schedule, the [REDACTED], and the signed Lotto Texas Drawing Results & Reserve Entry Form to the Controller or other authorized signatory. The Controller or other authorized signatory will review the information for completeness and accuracy and will sign the form.

2.5. Until such time as the Lotto Texas prize reserve fund is depleted, the designated employee shall update the Lotto Texas Prize Reserve spreadsheet using the information on the [REDACTED] Report and the information on the Lotto Texas Drawing Results

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& Reserve Entry Form. This step must be completed for all Lotto Texas drawings. See addendum for information acquired from the [REDACTED] Report. The Lotto Texas Drawing Results & Reserve Entry Form provides the amount of funds taken from the prize reserve or from other authorized sources including the State Lottery Account to fund the jackpot prize.

- 2.6. The first installment payment shall be made upon completion of commission validation procedures. The subsequent 24 installment payments shall be made annually on or about the 15th day of the month in which the applicable drawing occurred. The second through 24th installment payments shall be in equal amounts. The first installment payment may be equal to or higher than the subsequent installment payments.

### 3. The Cash Value Option calculation:

- 3.1. The prize will be paid, upon completion of all validation procedures, in a single payment in the amount of the cash value of those total installment payments. The designated employee will request an annuity & cash value estimate (non-purchase) from TTSTC the first working day following the Lotto Texas drawing. Do not return the signed annuity & cash value estimate to TTSTC. The prize amount will be a share of 40.47 percent of total sales for the roll cycle; or the cost on the day after the drawing of funding a share of installment payments.
- 3.2. The designated employee will review the annuity & cash value estimate to complete the Lotto Texas Drawing Results & Reserve Entry Form. If the "Cost of 25 Payments" is less than the "Amount Available", the difference "Additional Sales Contribution" is added to the jackpot prize amount. If the "Total Cost of 25 Payments" is more than the "Amount Available," the difference is paid from the Lotto Texas prize reserve or from other authorized sources, including the State Lottery Account as identified in Government Code, Section 466.355.
- 3.3. The designated Office of the Controller employee will provide the annuity & cash value estimate, the [REDACTED], and the signed Lotto Texas Drawing Results & Reserve Entry Form to the Controller or other authorized signatory. The Controller or other authorized signatory will review the information for completeness and accuracy and sign the form.
- 3.4. Until which time as the Lotto Texas prize reserve fund is depleted, the designated employee will update the Lotto Texas Prize Reserve spreadsheet using the information on the [REDACTED] Report and the information on the Lotto Texas Drawing Results & Reserve Entry Form. This step must be completed for all Lotto Texas drawings. See addendum for information acquired from the [REDACTED] Report. The Lotto Texas Drawing Results & Reserve Entry Form provides the amount of funds taken from the prize reserve or other authorized sources including the State Lottery Account to fund the jackpot prize.



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**4. The Combination of CVO and annual payments option:**

- 4.1. If more than one jackpot prize ticket is sold and if the tickets include at least one annual payment option ticket and one cash value option ticket refer to instructions in "B" above for payment of all annual payment shares and refer to "C" above for payment of all CVO shares.
- 4.2. A separate annuity & cash value estimate from TTSTC will not be requested for the cash value calculation. The Lottery Prize Schedule provided by TTSTC for the purchase of the annual payment option(s) will be used to determine the cash value.

**5. For all Lotto Texas drawings in which a jackpot prize ticket is sold:**

- 5.1. After each drawing, the [REDACTED] system will send an update to the general ledger to reflect any reductions in the prize reserve fund, used to pay the guaranteed fourth prize. If a transfer from the reserve is required to fund the jackpot prize category, a manual general ledger entry must be made by a designated general ledger employee. The designated employee will provide the Lotto Texas Drawing Results & Reserve Entry Form and the [REDACTED] screen to the designated general ledger staff for each drawing in which a jackpot prize ticket is sold.
- 5.2. The Lotto Texas Drawing Results & Reserve Entry Form, the [REDACTED], the Lottery Prize Schedule or the annuity & cash value estimate from TTSTC, and any other related prize calculation paperwork will be provided to the prize payment staff.
- 5.3. The designated employee will send an e-mail to inform certain lottery staff on the Jackpot Information e-mail distribution list, of the number of jackpot prize tickets sold for the drawing, the payment method(s) selected, the initial payment, the subsequent 24 payments (if applicable), and/or the total jackpot prize amount, the date of subsequent payments (if applicable), the advertised jackpot amount, and the amount of the bonus to be received by the qualifying retailer(s).
- 5.4. The TLC will pay a bonus of one percent (1%) of the Lotto Texas advertised jackpot or the jackpot based on sales (advertised plus additional sales contribution), whichever is greater, up to \$500,000 for any drawing, to the retailer(s) who sell(s) the jackpot-winning ticket(s). The one percent Lotto Texas retailer bonus is pari-mutuel. That is, should there be multiple jackpot winners with winning tickets sold by more than one retailer, the one percent bonus will be divided equally between the retailers.

**Winner Payment Processing**

Refer to procedure OC-WP-001, **Processing Prize Payments**.

Once the jackpot prize ticket has passed the internal validation process, the ticket is declared a valid winning ticket and the winner is declared. The designated prize payment employee prepares a Lotto Texas Payment Schedule based on the information obtained for the calculation of the prize. The schedule will be reviewed by the Controller or other

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designated staff prior to distribution. The Lotto Texas Payment Schedule will be provided to the winner and the Products Department staff. A copy of the payment schedule will remain in the winner's file. If two or more jackpot prize tickets are sold, a payment schedule will be created for each jackpot prize winner.

#### **Addendum: Lotto Texas Prize Reserve fund**

The Lotto Texas prize reserve fund is composed of all reserve funds remaining based on the prior Lotto Texas game rules. The Lotto Texas prize reserve fund may be decreased if the cost of the advertised jackpot paid over 25 years is greater than the sales contribution for the jackpot prize level. The Lotto Texas prize reserve may also be decreased if the total liability for the fourth prize exceeds the sales contribution for the fourth prize level. The Lotto Texas prize reserve fund may be used only for the Lotto Texas game.

The prize amounts for each drawing paid to each Lotto Texas player who selects a matching combination of numbers for prize level one, two, and three will vary because they are pari-mutuel prizes. Prize category four is a guaranteed prize (fixed prize) of \$3.00.

The pari-mutuel prize amounts, except the jackpot prize amount, are based on the total amount in the prize level for the Lotto Texas drawing distributed equally over the number of matching combinations in each prize level. The calculation of pari-mutuel prize for levels two and three will automatically be calculated by [REDACTED]. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar. Any part of the second or third prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the second or third prize tiers, respectively, for the next drawing. Therefore, prize levels two and three will not impact the Lotto Texas prize reserve fund.

If proceeds from Lotto Texas ticket sales and the Lotto Texas prize reserve fund are not sufficient to pay all jackpot prizes or fourth level prizes for a draw, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, Section 466.355.

#### **Addendum: [REDACTED] Report**

- "Tot" sales are the total amount of sales for the current draw.
- "Level" is the prize level for all prizes in the current draw.
- The transfer of cash contribution from the reserve fund or other authorized sources for the fourth prize level is calculated as the funds available for the fourth prize level less total liability. The transfer of additional funds to the jackpot prize, if applicable, is obtained from Lotto Texas Drawing Results & Reserve Entry Form.
- The "sales contribution" for each prize level is the percentage of sales attributed to each prize level.
- "Tot Liability" is the total liability for each prize level which is the number of prize tickets sold multiplied by the prize amount.
- "Breakage" is the amount remaining in each prize level after all prizes are paid for the drawing.

TRD-200904535  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: October 8, 2009

◆ ◆ ◆  
**Office of the Controller, Winner Payment Processing and Review**

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in this document will not be included in the print version of the Texas Register. The figure is available in the on-line version of the October 23, 2009, issue of the Texas Register.)*

The Texas Lottery Commission has determined that information that is confidential by law, because it goes to the security of the lottery, is contained within the procedure referenced below. The confidential information has been redacted within this procedure.

[Figure]

TRD-200904533  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: October 8, 2009

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**On-Site Wastewater Treatment Research Council**

**Correction of Error**

The On-Site Wastewater Treatment Research Council proposed amendments to 31 TAC Chapter 286 in the October 9, 2009, issue of the *Texas Register* (34 TexReg 7032). The preamble stated that §286.96 was proposed for amendment; however, that section is not addressed in the rulemaking action. The first sentence of the preamble on page 7032 should read as follows:

"The On-Site Wastewater Treatment Research Council (council) proposes to amend §§286.1, 286.2, 286.31, 286.51 - 286.53, and 286.95, 286.97, and 286.98; proposes to repeal §§286.9, 286.14, 286.74, 286.91 - 286.94, and 286.131; and proposes new §286.11 and §286.75."

On page 7035, second column, top of page, the beginning of the rule-making notice for Chapter 286, Subchapter B, should read as follows:

"SUBCHAPTER B. GRANTS"

"31 TAC §§286.31, 286.51 - 286.53, 286.75, 286.95, 286.97, 286.98"

"The proposed amendments and new section implement...."

TRD-200904637

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**Public Utility Commission of Texas**

**Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on October 7, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Etan Industries, Inc. d/b/a CMA Communications for an Amendment to its State-Issued Certificate of Franchise Authority; to Add the City of Schulenburg, Texas, Project Number 37536 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City Limits of Schulenburg, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37536.

TRD-200904577  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 9, 2009

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**Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on October 9, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Charter Communications VI, LLC d/b/a Charter Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 37551 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City Limits of Slaton, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37551.

TRD-200904614  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 13, 2009

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**Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on October 9, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 37552 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Magnolia, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 37552.

TRD-200904613

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 13, 2009



#### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 12, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority; Add City of Port Neches, Project Number 37560 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Port Neches, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37560.

TRD-200904615

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 13, 2009



#### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 12, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of RB3, LLC, a Colorado Limited Liability Company, for an Amendment to a State-Issued Certificate of Franchise Authority; Add City of Lone Oak, Project Number 37561 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Lone Oak, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll

free at (800) 735-2989. All inquiries should reference Project Number 37561.

TRD-200904616

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 13, 2009



#### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 12, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Arklaoktex, LLC, a Colorado Limited Liability Company, for an Amendment to its State-Issued Certificate of Franchise Authority; Add Cities of Caddo Mills and Leonard, Project Number 37562 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Caddo Mills, Texas and Leonard, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 37562.

TRD-200904617

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 13, 2009



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 7, 2009, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Wholesale Carrier Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 37537.

Applicant intends to provide facilities-based/UNE and resale telecommunications services.

Applicant's requested SPCOA geographic area includes the areas currently served by existing incumbent local exchange carriers in Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 29, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37537.

TRD-200904576

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 9, 2009

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### Notice of Application to Amend a Certificate of Convenience and Necessity for Proposed CREZ Priority Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on October 7, 2009, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) priority transmission line in Bell, Burnet and Lampasas Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for the Newton - Killeen 345-kV CREZ Transmission Line in Bell, Burnet and Lampasas Counties. SOAH Docket Number 473-10-0709; PUC Docket Number 37463.

The Application: Oncor Electric Delivery Company LLC (Oncor) requests to amend its CCN for a proposed CREZ priority transmission line designated the Newton - Killeen Transmission Line Project (Project). The proposed Project consists of constructing a new double-circuit 345-kV transmission line, which will extend from Oncor's new Newton Switching Station, located in Lampasas County, west of Kempner, Texas, to Oncor's existing Killeen Switching Station, located on Featherline Road, in Killeen, Bell County, Texas. The new 345-kV double-circuit line is approximately 31 miles in length and will be constructed on double-circuit lattice steel towers with both circuits in place. Certification of both circuits is being requested in this application. The estimated cost of the Project is \$57,072,000.

In 2008, the Commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket Number 33672, Order on Rehearing (October 7, 2008). The Newton - Killeen 345-kV transmission line project, the subject of this application, was specifically identified in that order as necessary facilities. In Docket Number 36801, Oncor was ordered to complete the project identified as the Newton - Killeen CREZ Priority Project. *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones*, Docket Number 36801, (July 8, 2009). The estimated date to energize facilities for the Newton - Killeen line is December 2012. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is November 6, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-0709 and PUC Docket Number 37463.

TRD-200904612  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 13, 2009

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### Notice of Application to Amend a Certificate of Convenience and Necessity for Proposed CREZ Priority Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on October 7, 2009, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) priority transmission line in Brown, Mills, Lampasas, McCulloch and San Saba Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for the Brown - Newton 345-kV CREZ Transmission Line in Brown, Mills, Lampasas, McCulloch and San Saba Counties. SOAH Docket Number 473-10-0710; PUC Docket Number 37464.

The Application: Oncor Electric Delivery Company LLC (Oncor) requests to amend its CCN for a proposed CREZ priority transmission line designated the Brown - Newton Transmission Line Project (Project). The proposed Project consists of constructing a new double-circuit 345-kV transmission line, which will extend from Oncor's new Brown Switching Station, located in western Brown County, southwest of Brownwood, Texas, to Oncor's new Newton Switching Station, located in Lampasas County, west of Kempner, Texas. The new 345-kV double-circuit line is approximately 92 miles in length and will be constructed on double-circuit lattice steel towers with both circuits in place. Certification of both circuits is being requested in this application. The estimated cost of the Project is \$158,135,000.

In 2008 the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket Number 33672, Order on Rehearing (October 7, 2008). The Brown - Newton 345-kV transmission line project, the subject of this application, was specifically identified in that order as necessary facilities. In Docket Number 36801, Oncor was ordered to complete the project identified as the Brown - Newton CREZ Priority Project. *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones*, Docket Number 36801, (July 8, 2009). The estimated date to energize facilities for the Brown - Newton line is December 2012. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is November 6, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-0710 and PUC Docket Number 37464.

TRD-200904611  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 13, 2009

◆ ◆ ◆  
**Texas Department of Transportation**

## Aviation Division - Request for Proposal for Professional Services

Grayson County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Grayson County, North Texas Regional Airport. TxDOT CSJ No. 10MPGRAY5. Scope: Airport Master Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Master Plan should be tailored to the individual needs of the airport.

There is no HUB goal. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

[www.txdot.gov/services/aviation/consultant.htm](http://www.txdot.gov/services/aviation/consultant.htm).

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

### Please note:

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than November 13, 2009, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating consultants for airport planning projects can be found at

<http://www.txdot.gov/services/aviation/consultant.htm>.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Michelle Hannah, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200904606

Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: October 13, 2009

## University of North Texas

### Notice of Amendment and Extension of Major Consulting Contract

#### Description of Activities Consultant Will Conduct:

The selected consulting firm is responsible for assisting the University of North Texas with the assessment of, and to advise on, public and private-sector funding sources for research and demonstration activities; to assist and advise on development, presentation and negotiation of grants, contracts and other agreements; to assist and advise on the design and execution of a government affairs and external relations plan for UNT; and to assist with the assessment of, and to advise on, funding for the UNT Fundraising Campaign.

#### Name and Business Address of Consultant:

Strategic Partnership, LLC  
1729 King Street, Suite 100  
Alexandria, VA 22314-2720

#### Total Value and Beginning and Ending Dates of Contract:

Value: \$577,500.00

Beginning Date: November 7, 2008.

Ending Date: September 30, 2010, all terms shall remain in effect until the completion, approval, and acceptance of all services; and the delivery of final payment to Strategic Partnership, LLC.

#### Dates on which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: Various dates - Monthly reports and any updates as needed by UNT.

TRD-200904638  
Carrie Stoeckert  
Assistant Director  
University of North Texas  
Filed: October 14, 2009

## Sam Houston State University

### Notice of Intent to Seek Consultant Services

In compliance with Chapter 2254, Texas Government Code, Sam Houston State University furnishes this notice of Request for Proposal (RFP). Sam Houston State University seeks proposals from qualified consulting firms to provide a financial feasibility study for Athletics in strengthening the University's Division I Profile which is more specifically described in the Scope of Work and Provision of Information section of the RFP. The President of Sam Houston State University has made the finding of fact that the consulting services are necessary. Sam Houston State University does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on the evaluation criteria developed by the University and included in the RFP.

Parties interested in a copy of the Request for Proposal should contact:

Dan Fry

Procurement and Business Services

Sam Houston State University

Box 2028

Huntsville, TX 77341

Voice: (936) 294-1904

email: pur\_djf@shsu.edu

The proposal submission deadline will be November 10, 2009 at 3:00 p.m. Central Prevailing Time.

The approximate beginning date of the contract will be on or about December 1, 2009 through May 1, 2010.

TRD-200904536

John Hitzeman

Director of Procurement Services

Sam Houston State University

Filed: October 8, 2009

## Stephen F. Austin State University

### Notice of Consultant Contract Amendment

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of amendment of the University's contract with consultant Dr. Marianne Schumde, 1230 Wright Circle #307, Celebration, Florida 34747. The original contract was in an amount not to exceed \$45,000, and the Notice of Award was published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10986). The contract was amended in an amount not to exceed \$13,000, excluding travel and per diem in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2729). The contract was further amended to include evaluation of the ENLACE Project beginning on August 27, 2007, and terminating on July 1, 2012, with a total amount not to exceed \$24,950, inclusive of travel and per diem, in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8978). The contract was amended to include evaluation of the project "Consortium for Excellence in Rural Teacher Preparation (CERT-Prep)" beginning on October 1, 2007 and terminating on September 30, 2008, with an automatic renewal of one year, pending availability of grant funding and successful completion of evaluation activities for the initial contract period. This amendment was made for a total not to exceed \$17,000, exclusive of travel and per diem in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9870). The contract was further amended to provide additional CERT Prep services in amount not to exceed \$19,000 for a contract period of October 1, 2007 through September 30, 2009 in the December 5, 2008, issue of the *Texas Register* (33 TexReg 10110). This contract will be amended to provide additional External Evaluator services for an amount not to exceed \$7,500 for an extended contract termination date of March 31, 2010.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

All inquiries should be directed to Stephen F. Austin State University, P.O. Box 13017, SFA Station, Nacogdoches, Texas 75962; phone (936) 468-2904.

TRD-200904545

R. Yvette Clark

General Counsel

Stephen F. Austin State University

Filed: October 9, 2009

### Notice of Availability of Consulting Services Contract

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

Stephen F. Austin State University, Nacogdoches, Texas, requests responses from individuals to evaluate a National Science Foundation grant-funded project.

The Department of Mathematics and Statistics has been selected for and received grant funds from the National Science Foundation for a five year project entitled The Texas Leadership Initiative: Mathematics Instruction Transformed, or Texas LIMIT. The grant requires evaluation of the program by an external evaluator.

The external evaluator selected for this project must have over twenty (20) years evaluating projects focused on mathematics and science improvement, ranging from small and narrowly-focused teacher enhancement efforts to National Science Foundation grants. The evaluator must also possess experience working with the local education service center and have experience working with Horizon Research Inc. instruments. The individual selected to perform this project will be chosen on the basis of competitive responses received.

Proposals must be received in the office of Dr. Lesa Beverly, Associate Professor in the Department of Mathematics and Statistics, Stephen F. Austin State University, P.O. Box 13040, 1936 North Street, Nacogdoches, Texas 75962 by November 11, 2009 in order to be considered. Please contact Dr. Beverly at (936) 468-3805 for further information.

TRD-200904607

R. Yvette Clark

General Counsel

Stephen F. Austin State University

Filed: October 13, 2009

## Texas Water Development Board

### Applications Received for October 2009

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Denton County Fresh Water Supply District No. 1A, 2540 King Arthur Blvd., Ste. 220, Lewisville, Texas 75056, received 8/18/2009 for financial assistance in the amount of \$3,335,000 under the American Recovery and Reinvestment Act of 2009 through the Drinking Water State Revolving Fund.

City of Greenville, P.O. Box 1049, Greenville, Texas 75403, received 8/18/2009 for financial assistance in the amount of \$305,000 under the American Recovery and Reinvestment Act of 2009 through the Drinking Water State Revolving Fund.

City of La Feria, 115 E. Commercial Ave., La Feria, Texas 78559, received 8/18/2009 for financial assistance in the amount of \$1,610,000 under the American Recovery and Reinvestment Act of 2009 through the Drinking Water State Revolving Fund.

City of Mission, 1201 E. 8th St., Mission, Texas 78572, received 8/18/2009 for financial assistance in the amount of \$8,285,000 under

the American Recovery and Reinvestment Act of 2009 through the Drinking Water State Revolving Fund.

Mountain Peak Special Utility District, 5671 Waterworks Road, Midlothian, TX 76065, received 8/18/2009 for financial assistance in the amount of \$1,000,000 under the American Recovery and Reinvestment Act of 2009 through the Drinking Water State Revolving Fund.

Springs Hill Water Supply Corporation, P.O. Box 970, Spring Branch, Texas 78070, received 8/18/2009 for financial assistance in the amount of \$3,130,000 under the American Recovery and Reinvestment Act of 2009 through the Drinking Water State Revolving Fund.

City of Amarillo, 509 E. 7th, Amarillo, Texas 79105, received 7/31/2009 for financial assistance in the amount of \$47,400,000 from the Water Infrastructure Fund.

Colorado River Municipal Water District, P.O. Box 869, Big Spring, Texas 79720, received 9/1/2009 for financial assistance in the amount of \$45,615,000 through the State Participation Account and in the amount of \$11,685,000 from the Water Infrastructure Fund.

TRD-200904547

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Filed: October 9, 2009

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### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

#### TITLE 40. SOCIAL SERVICES AND ASSISTANCE

##### *Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).